CRIMINAL REVISION.

Before Imam and Chapman, JJ.

FATEH SINGH

v.

EMPEROR.*

1913

May 21.

Rioting—Grievous hurt—Delivery of possession alleged to be of doubtful legality and objected to—Objection pending for decision at the time of occurrence—Effect of such delivery and actual possession thereunder—Distinction between enforcing and maintaining a right—Right of private defence—Penal Code (Act XLV of 1860), ss. 147 and $\frac{325}{149}$

Where the servants of a party, who had obtained delivery of possession of certain land, in execution of a decree, went upon it accompanied by a number of others armed with *lathis*, and were engaged in ploughing it, when they were attacked by a large body of men belonging to the party of the judgment-debtor, and thereupon a fight ensued in the course of which some members of both sides received injuries :

Held, that their master having been put in actual possession by a competent Court, the servants were not guilty of rioting or of constructive grievous hurt, though the delivery of possession was alleged to be of doubtful legality and was the subject of an objection by the judgment-debtor pending decision at the time of the occurrence.

A delivery not merely gives possession to a party, but connotes permission to utilize the subject of it in any lawful manner, such as entering upon the land, tilling it, growing and harvesting the crops and enjoying the produce.

Persons engaged in the exercise of a lawful right, of which they are in enjoyment, cannot be said to be enforcing a right but merely to be maintaining it.

Pachkauri v. *Queen-Empress*(1), followed.

THE petitioners' master, Harihar Prosad Singh of Dumraon, purchased, about three years ago, the village

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* Criminal Revision, No. 325 of 1913, against the order of G. J. Monahan, Sessions Judge of Shahabad, dated Jan. 16, 1913.

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of Kurmichak, together with certain rent decrees outstanding against the tenants, one of whom was Ram Ratan Mahton. On the 27th February 1911 Harihar purchased the holding of Ram Ratan in execution of the decree against him. The latter applied for a *chalan* on the 17th March to deposit the money. Four days later a petition of satisfaction was filed on behalf of Harihar coupled with a prayer to set aside the sale, but it was dismissed and the sale confirmed. On the 15th April 1912 he obtained delivery of possession from the Civil Court, whereupon an objection was lodged thereagainst by Ram Ratan on the 19th, which was pending decision at the time of the occurrence and of the appeal from the conviction of the petitioners.

It appeared that on the 25th June Harihar's servants, accompanied with about 40 or 50 men, armed with *lathis*, went on the disputed field and were ploughing a portion of the land formerly comprised in Ram Ratan's the judgment-debtor's holding, when they were attacked by a body of men, numbering from 80 to 100, belonging to the latter's party. On the side of the petitioners one Muluk was fatally wounded and two others severely injured. Three of the opposite party were also wounded, one of whom, Ram Ratan, received grievous hurt caused by Ram Kapuli and Danu, who were not before the Court. The petitioners were sent up, tried and convicted by a Deputy Magistrate of Arrah under ss. 147 and $\frac{325}{149}$ of the Penal Code, and sentenced to six months' rigorous imprisonment under each section consecutively. The common object laid in the charge was "by means of criminal force to assert the right or supposed right of Harihar Prosad over the field claimed by Ram Ratan." On appeal, the Sessions Judge of Shahabad upheld the convictions, but modified the sentence

passed on one of the petitioners. The material extracts from his judgment are as follows :—

[*After discussing the evidence as to payment by Ram Ratan of the decretal amount, the Judge continued*—] "Inasmuch as the petition of satisfaction had been filed by the decree-holder along with a prayer to set aside the sale, the subsequent *dakhal dehani* granted to the decree-holder, by an *ex parte* order, without any proper inquiry as to whether the money had or had not been paid and upon the basis of a mere affidavit, was of very doubtful legality . . . . . Forty men were on the side of the malik and 80 to 100 on that of the opposite party, the tenants. . . . . Thus I am convinced from the evidence that both sides went to the disputed field prepared to fight. Neither can claim a right of private defence. Even though the malik had obtained *dakhal dehani* of the disputed land (which *dakhal dehani* was, however, of very doubtful legality), this did not justify his servants in going with a large mob armed with *lathis* in order to cultivate the land by force, when they knew that the tenants were prepared to oppose them . . . It is quite clear that the malik's servants must have known that there would be a disturbance if they went to plough the land. Obviously, therefore, they were not justified in going in a body to plough the land forcibly or to prevent the tenants from doing so. In this view it makes little difference which side actually started ploughing the field first on the day of occurrence. As regards this point, I do not consider the evidence on the side of Ram Ratan, that they started ploughing first, sufficient to prove the allegation. . . . . I am of opinion that the malik's men commenced ploughing first. . . . As I have already said, the malik's men had no right to go to the field with an armed mob in order to cultivate it forcibly. It has been proved that Ram Autar and Ram Ratan were injured by some members of that mob in prosecution of the common object of that mob, which object has been shown to be to enforce the right or supposed right of Harihar to the field. Thus all the members of that mob were guilty of rioting."

Mr. Sinha (with him *Mr. Huq* and *Babu Chandra Sekhar Prosad*), for the petitioners. The Judge has found that the petitioners were put in possession by a competent Court. It was not for him to determine the question whether the delivery of possession was legal or not. It is sufficient for the purposes of this case that the petitioners were in actual possession. They did not enforce a right, but maintained an

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existing right and have not committed rioting: see *Pachkauri* v. *Queen-Empress* (1).

Babu Srish Chandra Chowdhry, for the Crown. The petitioners went on the disputed lands, on the day of the occurrence, with a large body of armed men to enforce their right, and were prepared to fight the opposite party. They were not justified in doing so: *Jairam Mahton* v. *Emperor*(2); *Kabir-uddin* v. *Emperor*(3).

IMAM AND CHAPMAN JJ. This rule was issued on the ground that the Sessions Judge having found that peaceful possession of the lands had been given to the petitioners' malik by the Civil Court and that the malik's men commenced ploughing the field first, it should have been held that the petitioners were in the lawful exercise of their rights over their property and, consequently, had the right of private defence.

The petitioners have been convicted of the offences of rioting and constructively of grievous hurt under sections 147 and 325 read with section 149 of the Indian Penal Code, and sentenced to rigorous imprisonment for six months each under each of the counts. They have further been bound down to keep the peace, under section 106 of the Criminal Procedure Code, for a period of two years after release.

The facts that gave rise to this case may be shortly considered. Rai Bahadur Harihar Prosad Singh of Dumraon is the malik of the village of Kurmichak, where this occurrence is said to have taken place. He purchased this village three years ago, and with it a number of decrees for rent that were outstanding against the tenants. One of these decrees was against Ram Ratan Mahton, who is one of the complainants

(1) (1897) I.L.R. 24 Calc. 686. (2) (1907) I.L.R. 35 Calc. 103.
(3) (1908) I.L.R. 35 Calc. 368.

in this case. In execution of this decree, Ram Ratan's holding was sold by the Court and purchased by Rai Bahadur Harihar Prosad Singh on the 27th February 1911. The judgment-debtor, on 17th March, applied for a *chalan* to deposit the money, but no money was deposited. On the 21st March 1911 a petition of satisfaction was filed on behalf of the decree-holder with a prayer that the sale might be set aside, but it could not be set aside inasmuch as the money was said to have been paid on the expiry of 30 days after the sale. The sale was, therefore, confirmed, and the application for setting it aside was dismissed. A year later, that is, on the 15th April 1912, the decree-holder applied for, and obtained, a delivery of possession in respect of the holding that he had purchased, it being his case that the petition of satisfaction had been filed on certain misrepresentations by the tenant, who in fact had not paid the money that was due. On the 19th April the judgment-debtor filed an objection against the delivery that had already been made, and that objection at the time of this occurrence, as also at the time that this matter was heard in appeal by the Judge, was yet pending decision.

This occurrence is said to have taken place on the 25th June 1912, and it is alleged that between the delivery and the day of occurrence nothing was done by either party to the land. It stands to reason that nothing could be done during that period inasmuch as the agricultural season in Bihar did not commence till about the time of the alleged occurrence, and that during the period from the 15th April to about the 25th June the land would naturally be allowed to remain fallow to befit it for cultivation. The fact that nothing was done during that period by the malik on the land does not affect his possession of it. On the 25th June 1912 the petitioners representing

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the malik. namely, Rai Bahadar Harihar Prosad, went to this land with their ploughs, accompanied by 40 to 50 people. After the arrival of the petitioners and their men on the land, and after the ploughing had been commenced a large body of men on the side of Ram Ratan and Ram Autar, the other complainant, numbering about 80 to 100, came to this field to attack the petitioners, and a general fight between the two parties began, resulting in one man on the side of the malik being killed, and some being seriously wounded, and a couple of men on the side of the tenants being wounded, the most serious injury on the side of the tenants being a broken arm.

The learned Judge has come to the conclusion that the men on the side of the malik were worsted and fled, while those on the side of the tenants remained in occupation of the place by reason of the superiority of their numbers. On these facts the petitioners have been convicted of the offences we have already mentioned.

The question we have to decide in this case is whether, on these facts, an offence under section 147 is made out against the petitioners. The learned Judge seems to think that the delivery of possession was a matter of doubtful legality. That subject is yet pending decision, and we have no desire to express any opinion on the question in this case ; but we take it from the learned Judge's conclusions that he does not doubt the effect of the delivery, though subsequently in the proceedings it may be held to have been improperly obtained. We are not concerned with the question whether the delivery of possession was improperly obtained or otherwise. We have to see whether the delivery of possession obtained on the 15th April 1912 did or did not give, as a matter of fact, possession to the petitioners' master, and whether,

acting under the delivery, the petitioners' master was or was not entitled to go on the land, not with a view to interfere with another's right, but to maintain a right which had been given him by a Court of competent jurisdiction. There seems to us to have been no justification for the tenants to go upon this land so long as the petitioners' malik had the delivery of possession in his favour. A delivery not merely gives possession to a party, but also connotes a permission to that party to utilize the subject of the delivery of possession in any lawful manner he chooses. One of the lawful ways of enjoyment of land over which possession has been given to a party is that he may go on the land, till it, grow and harvest the crops and enjoy the produce. In this case we see in the conduct of the petitioners nothing to warrant the conclusion that they were acting contrary to law, nor can it be said that they were engaged in enforcing a right. There is a considerable distinction between *enforcing* a right and *maintaining* a right. People engaged in the exercise of a lawful right of which they are in enjoyment cannot be said to be enforcing a right. These people, the petitioners, were merely maintaining a right, or, in other words, enjoying a right of which they had been given possession by a Court of competent jurisdiction; on the other hand, the conduct of the tenants amounts to a defiance of constituted authority. Under these circumstances, the petitioners were justified in repelling the attack upon them by persons who had no right to obstruct them and they cannot be held to have been guilty of rioting.

Next we consider their conviction under section 325 read with section 149. It is quite obvious that if the case of rioting fails, their conviction for the offence of hurt must also fail inasmuch as that is a conviction by implication only. There is nothing in this

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case to show that even if there were a charge against individual petitioners of causing hurt, they had exceeded the right of private defence. We are inclined to hold that the case of *Pachkauri* v. *Queen-Empress* (1) has the fullest application to the circumstances of this case. With these remarks, we make the rule absolute, and set aside the conviction and sentences under both the sections 147 and 325 read with 149, the result of which, of course, will be that the order under section 106 must also fail. The petitioners will be at once released from jail.

E. H. M. *Rule absolute.*

(1) (1897) I. L. R. 24 Calc. 686.

APPELLATE CIVIL.

Before Stephen and Mullick, JJ.

NABIN CHANDRA HAZARI

v.

MIRTUNJOY BARICK.*

1913

May 22.

Execution of Decree—Judgment-debtor, death of—Insolvency—Civil Procedure Code (Act V of 1908), s. 55 (4)—Surety, discharge of.

A judgment-debtor having under s. 55 (4) of the Code of Civil Procedure, found a surety that he would apply to be declared an insolvent within a specified time, and would appear when called upon, died before the expiration of such time:

Held, that the surety was discharged by the death of the judgment-debtor, and it was not open to the decree-holder to proceed against him.

Krishnan Nayar v. *Ittinan Nayar*(1) followed.

Appeal from Appellate Order, No. 341 of 1912, against the order of J. Phillimore, District Judge of Chittagong, dated April 30th, 1912, reversing the order of Suresh Chandra Sen, Munsif of Fatikchary, dated Jan. 27, 1912.

(1) (1901) I. L. R. 24 Mad. 637.