

the letter of Reference, to go into details. It is sufficient to observe that this case could not by any stretch of the language of section 562 (1A) be brought within the four corners thereof.

In this view of the matter we vacate our order of the 5th May 1927, and after re-hearing the Reference, in the presence of both parties, we accept the Reference; we set aside the order made by the trying Magistrate under section 562 (1A) of the Criminal Procedure Code and maintain the conviction under section 323 of the Indian Penal Code, and sentence the accused to suffer rigorous imprisonment for the period of one year.

The accused who is on bail will surrender to his bail, and undergo the sentence passed on him.

E. H. M.

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### CRIMINAL REVISION.

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*Before C. C. Ghose and Cammiarle J.J.*

LAL MOHAN PODDAR

*v.*

EMPEROR\*

1927

RAMESH  
PADA  
MONDAL

*v.*  
KADAMBINI  
DASSI.

1927

June 15.

*Income-tax—False return—Production of false account books before an Income-tax Officer—“Judicial proceeding”—Using evidence known to be false—Income-tax Act (XI of 1922) ss. 23 (2), 37—Penal Code (Act XLV of 1860), s. 196.*

A proceeding before an Additional Income-Tax Officer, on the production of account books, pursuant to a notice under section 23 (2) of the Income-Tax Act, is a “judicial proceeding” only for the purposes of sections 193 and 228, but not of section 196, of the Penal Code. Where the petitioner, who was a member of a firm, produced certain false account books of the firm, before such officer, on requisition, it was held that his conviction under section 196 of the Penal Code was bad in law.

\* Criminal Revision No. 324 of 1927, against the order of J. M. Pringle Sessions Judge of Dacca, dated March 4, 1927.

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The petitioner, Lal Mohan Saha, and his brothers, including Kunja Mohan, were members of a firm which carried on the business of cloth merchants and money-lenders at Narainganj. He had passed the B. L. Examination, and joined the Bar at Narainganj in 1925. The firm was called upon by the Additional Income-tax Officer at Dacca to submit a return of its income for 1924/1925, and a verified return, signed by Kunja, was filed on 13th August 1925. The officer was not satisfied with the return, and made a requisition under section 23 (2) of the Income-tax Act (XI of 1922) on the firm to produce its account books for 1329, 1330 (B.S.). On the 8th September 1925 the petitioner produced before the officer the account books for two years only, but the latter required the production of a list of the investments of the money-lending business, and the accounts for the previous years. On the 25th November 1925 the petitioner produced the same before the second Additional Income-tax Officer. On the 31st January 1926 the two officers paid a surprise visit to the firm, and seized certain books of accounts from which it appeared that the books produced before them were false account books.

The petitioner and his brother Kunja were thereafter placed on trial before the Subdivisional Officer at Dacca. The petitioner's defence was that the books were produced by the servants of the firm and not by himself; and Kunja denied his signature on the return. The Magistrate convicted Kunja under sections 177 and 196 of the Penal Code and sentenced him to imprisonment and fine. The petitioner was convicted under sections 177 and 196, of the Penal Code, and sentenced to a fine and detention till the rising of the Court.

An appeal against the convictions and sentences was dismissed by the Sessions Judge of Dacca with the modification that the conviction of the petitioner under sections 177 of the Penal Code was set aside. He thereupon moved the High Court, and obtained the present Rule.

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*Sir P. C. Mitter*, Advocate, *Babu Bhagirath Chander Das* and *Babu Suresh Chunder Patuqdar* for the petitioner.

*The Deputy Legal Remembrancer (Mr. Khundkar)* for the Crown.

GHOSE AND CAMMIADE JJ. This Rule must be made absolute and for the following reasons. It appears that the petitioner before us is a member of a family who carry on an ancestral business in the district of Dacca as cloth merchants and money-lenders. The firm in question were asked by the Income-tax authorities to submit a return of their income for purposes of assessment of income-tax. A return was filed, but thereafter a notice was served on the firm under the provisions of section 23 (2) of the Indian Income-tax Act, 1922, requiring the production of certain account books for the years 1329 and 1330 B. S. The petitioner before us, as stated above, is a member of the firm, but he is also a legal practitioner at Naringanj. It appears that the petitioner on two days, namely the 8th September 1925 and the 25th November 1925, produced certain books belonging to the firm in question before the Additional Income-tax Officer. It is said that he attended before the Additional Income-tax Officer for the purpose of explaining the accounts contained in the said books to the Additional Income-tax Officer. It was found, however, in the course of further investigation by the Income-tax authorities,

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that the books in question were false account books, and had been prepared for the purposes of the assessment of income-tax. Thereafter the petitioner along with another person was prosecuted for having committed an offence punishable under sec. 196 of the Indian Penal Code. He was convicted and sentenced to pay a fine of Rs. 500 and to be detained in Court till the rising. The petitioner thereafter moved this Court and obtained the present Rule.

On behalf of the petitioner Sir Provas Mitter has argued that the petitioner could not be convicted under section 196 of the Indian Penal Code having regard to the provisions of section 37 of the Indian Income-tax Act. Section 37 of the Act runs as follows—“ The Income-tax Officer, Assistant Commissioner and Commissioner shall, for the purposes of “ this Chapter, have the same powers as are vested in a “ Court under the Code of Civil Procedure, 1908, when “ trying a suit in respect of the following matters, “ namely :—(a) enforcing the attendance of any person “ and examining him on oath or affirmation ; (b) com- “ pelling the production of documents ; and (c) issu- “ ing commissions for examination of witnesses ; and “ any proceeding before an Income-tax Officer, Assis- “ tant Commissioner or Commissioner under this “ Chapter shall be deemed to be a ‘ judicial proceeding ’ “ within the meaning of sections 193 and 228 of the “ Indian Penal Code ”.

It would appear from what is contained in section 37 of the Indian Income-tax Act that any proceeding before an Income-tax officer, Assistant Commissioner or Commissioner under the Chapter in which section 37 finds a place [it may be noted that a proceeding pursuant to a notice under section 23 (2) is a proceeding under the said Chapter] would be deemed to be a “ judicial proceeding ” for the purpose of sustaining

convictions under sections 193 and 228 of the Indian Penal Code. As we read section 37, it seems to us to be clear that the Legislature has for the purpose of punishing offences under sections 193 and 228 of the Indian Penal Code (and under no others) converted proceedings before the officers mentioned therein, which are not judicial proceedings ordinarily, into "judicial proceedings". Section 37, being a penal section, has to be construed strictly, and, as will be seen from what is stated above, there is no reference whatsoever in the section itself to section 196 of the Indian Penal Code. Therefore, having regard to the terms of section 37, it cannot be said that the proceedings which took place before the Additional Income-tax officer on the production of the account books on the two dates referred to above were "judicial proceedings". If that is so, having regard to section 37, there is no room whatsoever in it for attracting into it the provisions of section 196 of the Indian Penal Code.

The result, therefore, is that the conviction and sentence of the petitioner under section 196 of the Indian Penal Code, must be set aside and the fine if paid will be refunded.

E. H. M.

*Rule absolute.*

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