

1928

LAKSHMI CHARAN
MAJUMDAR

v.

NABADWIP
CHANDRA PANDIT.

MITTER J.

Ram v. Kundan Lal (1). We think that in order to establish an abandonment of right which is created by a document which is explicit and unambiguous in its terms, something more than a mere non-enforcement of right over a number of years is necessary. It is conceded that there is nothing more in this case than the fact of non-realization of rent for a number of years. That alone would not justify us in holding that there has been a permanent abandonment of the right to receive a higher rent.

The result is that the decree of the lower appellate Court must be set aside and that of the Munsif restored: but in the circumstances of the present case, there will be no order as to costs.

MALLIK J. concurred.

Appeal allowed.

B. M. S.

(1) (1899) I. L. R. 21 All. 496 ; L. R. 26 I. A. 58.

CRIMINAL REVISION.

Before C. C. Ghose and Jack JJ.

LEGAL REMEMBRANCER.

v.

SRISH CHANDRA ROY.*

1928

May 10.

Jurisdiction—Lunatic, if can be handed over to relatives by the Judge—“Detained in safe custody”, meaning of—Criminal Procedure Code (Act V of 1897), ss. 471 and 475.

“Detained in safe custody” in s. 471, Cr. P. C., does not mean “detained in the custody of friends or relatives.”

The Judge has no jurisdiction under s. 471 of the Criminal Procedure Code to direct a person, who by reason of his insanity is acquitted of a charge of murder but is found to have committed the act and is sane at the time of the trial, to be kept in the safe custody of his relatives, on their furnishing proper security. It is the Local Government alone who can make such order under s. 471 of the Criminal Procedure Code.

APPLICATION by the Superintendent and Remembrancer of Legal Affairs, Bengal.

* Criminal Revision No. 299 of 1928.

The facts are fully set out in the judgment of the Court.

The Deputy Legal Remembrancer, Mr. Khundkar (with him *Mr. Anil Chandra Roy Chowdhury*), for the petitioner. The order passed by the Judge was clearly without jurisdiction. He was in error in supposing that under s. 471, he could direct the accused to be handed over to his relatives. The proper authority is the Local Government. A comparison of the language used in ss. 466, 471 and 475 of the Criminal Procedure Code makes this clear. S. 466 cl. (1) lays down that pending the investigation, the accused may be "released on sufficient security." Clause (2) of the same section provides that when bail is not granted, the accused shall be "detained in safe custody." This clearly shows that "detained in safe custody" is quite different from being "released on sufficient security." The language used in s. 471 is that such person is to be "detained in safe custody" whereas that in s. 475 is that such person "may be delivered to such relative or friend." It is clear, therefore, that the Local Government alone could deliver such person to his relatives on taking proper security. Moreover, the Local Government is in a position to find out whether the relatives praying for such custody, will be able to fulfil the conditions laid down in s. 475. The Judge has no means to find out these facts. The rules framed under the Lunacy Act also make this clear. The order should, therefore, be set aside.

GHOSE AND JACK JJ. In this case what happened is this: The opposite party No. 1 was tried before the Additional Sessions Judge of Tippera and a jury under section 302 of the Indian Penal Code for having murdered his wife. The case for the defence was that the opposite party No. 1 at the time he committed the act in question was of unsound mind and therefore incapable of knowing what he was doing or that it was wrong or illegal. The jury returned a unanimous verdict of not guilty. In

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answer to a question put by the learned Sessions Judge to the jury, the foreman stated that the jury were of opinion that the opposite party No. 1 had killed his wife but that he was insane and incapable of knowing what he was doing. The learned Judge agreeing with the verdict of the jury acquitted the accused by his order, dated the 11th January, 1928. He was of opinion that at the date of the aforesaid order, that is, on the 11th January, 1928, the opposite party No. 1 was sane and he accordingly directed that he should be kept in the safe custody of his relatives, upon their furnishing two security bonds of Rs. 2,500 each to keep the opposite party No. 1 in safe custody and to prevent him from doing injury to himself or to others and to produce him if and when required by the Court. It appears that thereafter the opposite party No. 2, who is the father and the opposite party No. 3, who is the brother of opposite party No. 1, stood surety for the opposite party No. 1, in terms of the order of the learned Judge. This order of the learned Judge was apparently made under the provisions of section 471 of the Criminal Procedure Code.

The Local Government has through the Legal Remembrancer now moved this Court and the contention on behalf of the Legal Remembrancer is that having regard to the language used in sections 466, 471 and 475 of the Criminal Procedure Code, the order made by the learned Judge referred to above was clearly one which was without jurisdiction. It is contended that all he could do under section 471 was to detain the accused in safe custody and to report the matter to the Local Government and that under section 475 it is the Local Government who can, if so satisfied, deliver the accused to any relative or friend of him for safe custody.

In our opinion, this contention is well founded and must be given effect to. "Detained in safe custody" in section 471 does not mean, having regard to the language used in section 475, "detained in the custody of friends or relatives." That is quite

clear. It would, therefore, follow that the learned Judge was in error in making the order in the form in which he did. That order must therefore be set aside and it must be left to the Local Government under section 475 to pass suitable orders for the delivery of the accused to such relatives or friends of the accused as may apply to the Local Government in that behalf.

A. C. R. C.

Orders set aside.

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INCOME TAX REFERENCE.

Before Rankin C.J., Buckland and Mukerji J.J.

TURNER MORRISON & Co., LTD., *In re.**

1928.

May 16.

Income-tax—Whether money received by company of managing agents as compensation for liquidation of principal company is receipt arising from business—Income-tax Act (XI of 1922), ss. 4 (3) (vii), 12.

Where a company of managing agents obtained a certain sum of money as compensation for the liquidation of the principal company, the amount is a receipt arising from business and is, therefore, liable to be assessed to income-tax.

Herbert v. McQuade (1), *Turner v. Cuxon* (2), *Cowan v. Seymour* (3), *Seymour v. Reed* (4) and *Wing v. O'Connel* (5), distinguished.

INCOME TAX REFERENCE at the instance of the assessee, Messrs. Turner Morrison & Co.

The Cossipur Sugar Works, Ltd., was incorporated as a company in the year 1909 and, under the articles of association, the assessee (then an unincorporated firm of the name of Messrs. Turner Morrison & Co.), as from time to time constituted, were appointed the managing agents of the said Sugar Works Company, but there was nothing in the articles regarding their appointment for any fixed term of years. The latter company were the registered holders of 66·83 per cent. of the share capital of the Sugar Works Company. The

*Income-tax Reference.

(1) [1902] 2 K. B. 631.

(3) [1920] 1 K. B. 500.

(2) (1888) 22 Q. B. D. 150.

(4) [1927] A. C. 554.

(5) [1927] 1 Irish Rep. 84.