

for consideration in view of the fact that the defendants have erected the building without the plaintiff's consent and in spite of his protest. That, however, is a different matter.

As what we have said is sufficient to dispose of the appeal, we do not pronounce any opinion on the other defences of the defendants.

The appeal, therefore, is dismissed: but, as the conduct of the defendants has not been too fair and has afforded legitimate ground to the plaintiff to seek the intervention of the court, our order is that each party will bear his or their costs in this litigation throughout.

Appeal dismissed.

G. S.

CRIMINAL REVISION.

Before Mukerji J.

NIBARANCHANDRA BHATTACHARYA

v.

EMPEROR.*

1929.

ARSHAY
KUMAR
SHAH

v.

BHAJAGABINDA
SHAH.

1929

Jan. 29.

Conspiracy—Cognizance without sanction of Local Government—Trial of charges not requiring sanction along with charges requiring sanction—Indian Penal Code (Act XLV of 1860), ss. 120B, 384, 384/114—Criminal Procedure Code (Act V of 1898), s. 196A.

Where the object of a conspiracy was to commit an offence under section 384, Indian Penal Code, and no sanction had been accorded by the Local Government to the prosecution of the accused under section 120B of that Code for conspiracy, and the accused were tried and convicted both under section 120B, and sections 384 and 384/114 of the Code,

held that the court could not take cognizance of the offence of conspiracy without sanction and the convictions under sections 384 and 384/114 could not be maintained either, as it was likely to result in prejudice to the accused.

Held, further, that the trial held on charges, which did not require sanction, along with such as were not cognizable without sanction under section 196A, Criminal Procedure Code, could not be separated in that way.

CRIMINAL RULE obtained by Nibaran Chandra Bhattacharya and another, accused.

*Criminal Revision, No. 1246 of 1928, against an order of T. H. Ellis, Sessions Judge, Faridpur, dated Sep. 22, 1928, affirming an order of B. C. Sen, Deputy Magistrate of Madaripur, dated July 31, 1928.

1929

NIBARAN-
CHANDRA
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v.
EMPEROR.

The two accused were tried for conspiring to commit offences under sections 384 and 384/144, Indian Penal Code, respectively. No previous sanction was obtained for the trial under section 120B, Indian Penal Code. They were convicted of both offences and obtained this Rule in the High Court. In the explanation submitted by the learned Magistrate he suggested that the convictions under sections 384 and 384/114 should be maintained and that the sentences might be treated as passed under those sections.

Mr. Sureshchandra Talukdar, Mr. Ramendrachandra Ray and Mr. Mahendrakumar Ghosh, for the petitioners.

No one appeared for the opposite party.

MUKERJI J. The petitioners have been convicted under section 120B, Indian Penal Code. The petitioner No. 1 has also been convicted under section 384, Indian Penal Code, and No. 2 under section 384/114, Indian Penal Code. The ground upon which this Rule has been issued is that the trial was vitiated, as the sanction contemplated by section 196A, Criminal Procedure Code, had not been accorded by the Local Government to the prosecution of the petitioners under section 120B, Indian Penal Code. Now the object of the conspiracy having been to commit an offence under section 384, Indian Penal Code, which is a non-cognizable offence, the court could not take cognizance of the said offence without the sanction of the Local Government or of the District Magistrate empowered in that behalf. In the explanation which the learned Magistrate has submitted in answer to the Rule, he has suggested that the convictions under sections 384 and 384/114, Indian Penal Code, as against the petitioners Nos. 1 and 2 respectively, may be maintained and that the sentence passed on them may be treated as having been passed under the said sections. Apart from anything else, this course, in my opinion, is likely to result in prejudice to the petitioners. They had been put on their trial in respect of offences under sections 384 and 384/114 along with a charge under section

120B. It is just possible, and indeed it is not unlikely, that a good deal of evidence that was adduced on behalf of the prosecution in this case in order to establish the charge of conspiracy would not be relevant as against the petitioners on the substantive charges under sections 384 and 384/114, Indian Penal Code. The trial held on charges, which do not require sanction, along with such as are not cognizable without sanction under section 196A, Criminal Procedure Code, cannot be separated in this way.

I am, accordingly, of opinion that this Rule should be made absolute and the convictions and sentences passed on the petitioners should be set aside and the fines, if paid by them, should be refunded. It will be open to the prosecution to proceed afresh against the petitioners in respect of the charges under sections 384 and 384/114, Indian Penal Code, or even as regards the charge under section 120B, Indian Penal Code, provided that the requisite sanction under section 196A, Criminal Procedure Code, has been duly obtained. Such retrial, if it is to take place, will be held before some Magistrate other than the learned Magistrate who has already dealt with this case.

G.S.

Rule absolute.

1929

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NIBARAN-
CHANDRA
BHATTACHARYA
v.
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MUKERJI J..