

## CRIMINAL REVISION.

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Before Lord-Williams and Jack J J.

1935

Mar. 12.

ALLAN E. KER

v.

PRAMATHANATH SARKAR.\*

*Lien—Solicitors' lien, if available in criminal cases—Code of Criminal Procedure (Act V of 1898), s. 94—Indian Penal Code (Act XLV of 1860), s. 497.*

A solicitor's lien is a right exercisable against his client, and gives the solicitor no higher right against third persons than the client himself possesses.

*Furlong v. Howard* (1) referred to.

A solicitor's general lien is no answer to an order of a magistrate under section 94 of the Code of Criminal Procedure for the production of the documents of his client in his possession, when, for the purpose of substantiating the charge against the accused, it is necessary that the Crown should use these documents as evidence against the accused. The documents remain subject to the solicitor's lien and must be returned to the solicitor and not to the client.

Although no court may take cognizance of an offence under section 497 of the Indian Penal Code except upon a complaint made by the husband, nevertheless, the offence mentioned in that section is an offence against the public in which the Crown, as always, is the prosecutor. The issue in a criminal case is always between the Crown and the accused.

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The material facts and arguments appear from the judgment.

*Lewis and Gopinath Biswas* for the petitioner.

LORT-WILLIAMS J. This is a petition on behalf of the firm of Messrs. Clarke, Rawlins, Ker & Co., carrying on business as solicitors and notaries in Calcutta. They were instructed to act on behalf of the complainant in respect of a charge which was

\*Criminal Revision, No. 237 of 1935, against the order of S. K. Sinha, Chief Presidency Magistrate of Calcutta, dated March 11, 1935.

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subsequently preferred under section 497 of the Indian Penal Code. Process was issued against the accused and, subsequently, the complainant intimated to the petitioners that their services as attorneys were no longer required by him.

Thereupon, letters passed between the complainant and the petitioners, in which the petitioners stated that all documents belonging to the complainant, which were in their hands, would be handed over to him on payment of their bill of costs. Thereafter, the petitioners were served with a subpoena to produce the documents before the Chief Presidency Magistrate. The petitioners then moved the Chief Presidency Magistrate for an order that their costs should be paid before they produced the documents under the order. The magistrate then made the following order:—

Heard both sides. Ordered that petitioner deposit all documents, received by him from his client, in court; I propose to use them for the purposes of this case, but petitioner's prayer that he be allowed until 2-30 p.m. to-day, before the documents are used, is allowed.

Thereupon, Mr. Lewis, on behalf of the petitioners, applied to this Court for an order that the Chief Presidency Magistrate's order be stayed, and that a Rule be issued to show cause why the order should not be set aside. An order was made staying the magistrate's order until this morning. Mr. Lewis now asks that a Rule should issue. It seems clear that the magistrate's order was made under section 94 of the Code of Criminal Procedure. In my opinion, a solicitor's general lien upon documents is no answer to an order made under this section. Although no court may take cognizance of an offence under section 497 of the Indian Penal Code except upon a complaint made by the husband as provided in that section, nevertheless, the offence, referred to in that section, is, like all other offences described in the Indian Penal Code, an offence against the public, in which the Crown, as always, is the prosecutor. The complainant merely puts the Crown in motion. Thereafter, the issue in a criminal case is always between the Crown and the accused.

For the purpose of substantiating the charge against the accused, it is necessary that the Crown should use these documents as evidence against the accused. The court is entitled under section 94 of the Code of Criminal Procedure to issue a summons for the production of any such document necessary or desirable for the purposes of any investigation, enquiry, trial or other proceedings under the Code as provided by that section. It is undoubted that such an order could be made by the court summoning the complainant to produce such documents, these documents being the property of the complainant. If, therefore, the complainant can be ordered by the court to produce documents belonging to him, similarly his solicitor or attorney may be ordered to produce them if they are in his possession, and this regardless of whether he has a lien upon them or not.

A solicitor's lien is a right exercisable against his client, and gives the solicitor no higher right against third persons than the client himself possesses. Thus, notwithstanding the lien, the solicitor can be compelled to produce the papers in his possession if his client would have been bound to produce them. In the case of *Furlong v. Howard* (1), it was decided that whenever a client is bound to produce a deed, for the benefit of a third person, so also is his solicitor, though the latter may have a lien on it for costs against his client.

It is clear that the complainant could have been ordered to produce these documents, and, consequently, his attorney may be ordered to produce them, notwithstanding his lien. Of course the documents remain subject to the attorney's lien, and when the court has finished with them, they must be returned to the attorney and not to the complainant. In these circumstances, this petition must be dismissed, and the stay which was ordered yesterday is removed. The original application filed before the Chief Presidency Magistrate may be returned.

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JACK J. I agree. I would like to add that if such documents had been exempt from production, that would have been mentioned under clause (2) of section 94, which exempts certain documents from liability of production. But there is no exemption of documents which are the subject matter of a private lien.

*Application dismissed.*

A. C. R. C.