

CRIMINAL REVISION.

Before Cunliffe and Henderson J.J.

1936
Aug. 14, 17.

CHHOTE RAM SWARUP SHA

v.

EMPEROR.*

Evidence—False statement in an insolvency petition, if an offence—Indian Penal Code (Act XLV of 1860), s. 199.

Statements in a verified insolvency petition under the Provincial Insolvency Act to the District Judge are not statements "bound or authorised by law to be received as evidence" within the meaning of s. 199 of the Indian Penal Code, and as such a conviction under that section for any such false statement contained in such petition is illegal.

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The material facts and arguments appear from the judgment.

S. K. Sen, Heeralal Ganguli and Sudheer Chandra Chaudhuri for the petitioner.

Debendra Narayan Bhattacharjya and Beereshwar Chatterji for the Crown.

CUNLIFFE J. This rule raises a short point of law on its own facts. The petitioner was convicted under s. 199 of the Indian Penal Code for making a false statement. Section 199 is a provision of the Code which deals with a very specialised form of perjury. This section, which is not very often used, is, in the following terms :—

Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

*Criminal Revision, No. 680 of 1936, against the order of B. M. Mitra, Additional Sessions Judge of 24-Parganás, dated May 19, 1936, confirming the order of P. Ganguli, Honorary Magistrate, First Class, at Alipore, dated Mar. 30, 1936.

The fact was that the petitioner put in a petition in insolvency and in his petition he made a false statement to the effect that he had never been an insolvent before. This was proved to be untrue and hence this prosecution.

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The question to be decided is whether this statement contained in the insolvency petition which was made in the district under the Provincial Insolvency Act comes within the ambit of the expression that it was a statement "bound or authorised by law, to be received as evidence". In my opinion it does not. The statements in a petition of insolvency are very analogous to statements made in ordinary civil pleadings—statements which are verified by law on the part of the person who places them on the record. But they certainly do not constitute evidence which is bound to be accepted by the Court. I doubt whether they are evidence in any sense of the word, except, possibly, in the form of admissions against the person who makes them. Certainly a petition in insolvency unbacked or uncorroborated by other evidence would not be accepted by the Court against the interest of any other person who was concerned in the question of the petitioner's insolvency. There are decisions upon this question, but, in my view, they turn on their own facts and it is not necessary to cite them. The Rule, accordingly, is made absolute on the basis that I have indicated. The conviction and sentence passed upon the petitioner are set aside and we direct that the accused be set at liberty forthwith.

HENDERSON J. I agree. The decision of this Rule rests on the interpretation of the words "to receive as evidence of any fact" in s. 199 of the Indian Penal Code. The prosecution was based on a statement made by the petitioner in a verified petition to an insolvency Court to the effect that he had never filed any other application in insolvency. It is abundantly clear that the petition could not be used as evidence to prove that in fact he had not filed such a

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petition. It might be used for the purpose of contradicting his own evidence on oath, but certainly it is not evidence *per se* of any fact with regard to the insolvency.

On behalf of the Crown, Mr. Bhattacharjya sought to support the conviction not upon the ground that this petition could be received as evidence in the ordinary sense of the term, but upon the ground that it might be described as evidence in a certain special sense. His argument was to the effect that without this statement, the petitioner would have been unable to induce the learned District Judge presiding over the insolvency Court to take any steps with regard to his petition. In this argument Mr. Bhattacharjya relied on the definition of "evidence" in the Indian Evidence Act. In my opinion that definition is really against him.

Rule absolute.

A.C.R.C.