

CRIMINAL REVISION.

Before Derbyshire C. J. and Bartley J.

SASHI BHUSAN DE SARKAR

1940
April 16.

v.

FUL KHAN.*

Sanction—*Debt Settlement Board or its appellate officer, if Courts—Offences under s. 54 of the Bengal Agricultural Debtors Act, What are—Code of Criminal Procedure (Act V of 1898), s. 195—Bengal Agricultural Debtors Act, 1935 (Ben. VII of 1936), ss. 40, 54.*

Debt Settlement Boards or the appellate officers created under the Bengal Agricultural Debtors Act are not Courts within the meaning of s. 195 of the Code of Criminal Procedure.

Section 54 of the Act creates certain offences which are not included in the Indian Penal Code, which may be committed by persons who go before Debt Settlement Boards and, whilst purporting to conform to the procedure there, attempt to deceive the Boards.

The production before the appellate officer of a mortgage bond falsely endorsed as to repayments, does not come within s. 54 of the Bengal Agricultural Debtors Act, but is an offence of a more serious and general nature coming under the Indian Penal Code.

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The complainant Ful Khan borrowed Rs. 400 from petitioner No. 1 Sashi Bhusan De on a simple mortgage bond, dated September 12, 1925. He made an application under the Bengal Agricultural Debtors Act for settlement of his debts before the Azimnagar Debt Settlement Board in Dacca district. The petitioner No. 1 produced the bond which contained endorsement of payment of Rs. 50, dated Srâban 21, 1344, purporting to contain a thumb impression of the complainant. This was denied by the latter and on May 4, 1939, the Board rejected the claim of the petitioner as barred by limitation, holding that the

*Criminal Revision, No. 12 of 1940, against the order of A. F. M. Rahman, Sessions Judge of Dacca, dated Dec. 16, 1939.

payment of Rs. 50 had not been established. While an appeal was pending before the special appellate officer, namely, the Second Munsif of Manikganj, the debtor Ful Khan lodged a complaint on July 14, 1939, before the Sub-Divisional Officer on the allegation that the endorsement was forged. Petitioner No. 2 was alleged to have abetted petitioner No. 1. On October 7, 1939, the special appellate officer, after examining some witnesses including a handwriting expert, held that the endorsement was genuine and remanded the case to the Board. Thereupon, on November 26, 1939, the petitioners moved the learned Sub-Divisional Officer to drop the proceedings in view of the decision of the special appellate officer, which the learned Magistrate refused to do. The petitioners then moved the learned Sessions Judge without success and later on obtained the present Rule.

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Ramaprasad Mukhopadhyaya and Mohit Kumar Chatterjee for the petitioners.

Lalit Mohan Sanyal for the Crown.

Nural Momen for the opposite party.

DERBYSHIRE C. J. The applicants who have obtained this Rule *nisi* desire their prosecution for forgery and cheating to be quashed, on the ground that it is in contravention of the provisions of s. 195 of the Code of Criminal Procedure and also s. 54 of the Bengal Agricultural Debtors Act.

A prosecution for forgery where a document has been used in Court can only be started on the complaint of that Court or one to which it is subordinate by reason of s. 195 of the Code of Criminal Procedure.

Is the tribunal in this case a Court? He is the appellate officer set up under s. 40 of the Bengal Agricultural Debtors Act who has functions similar to those of debt settlement boards from which appeals

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are brought. The purpose of these tribunals is to adjust debts between agricultural debtors and their creditors either by agreement or compulsorily, and then after adjustment to make an award in favour of the creditor, which award shall be enforced in certain specified ways.

These tribunals are not intended to do justice according to law between debtor and creditor; they are intended to adjust the debt according to the debtor's ability to pay. They are not Courts as defined in s. 195 of the Code of Criminal Procedure. Are they Courts within the ordinary meaning of the word?

There is an old definition, and yet a comprehensive one, by a great authority; it is that of Sir Edward Coke in his treatise "Coke on Littleton 58—a", where he says "a Court is a place where justice is judicially administered".

The functions of the debt settlement tribunals, in the first instance or on appeal, however admirable their purpose, do not come within that wide definition. They are not Courts; they are what their names indicate debt settlement tribunals. A similar conclusion in the case of debt settlement boards as tribunals of first instance was reached by a Division Bench of this Court consisting of Khundkar and Edgley JJ. on March 1, 1940, in the case of *Hari Charan Kundu v. Kaushi Charan De* (1).

It was next said that the production before the appellate tribunal of mortgaged documents falsely endorsed as to the repayment comes within s. 54(a) of the Bengal Agricultural Debtors Act, namely, intentionally making a false statement in writing. The production of that document, if it was a false document, before the tribunal fraudulently or dishonestly was something more than the offence set out in

s. 54(a). Section 54 creates certain offences, which are not included in the Indian Penal Code, which may be committed by persons who go before debt settlement boards and, whilst purporting to conform to the procedure there, attempt to deceive the boards. The offences alleged here are something beyond that; they are offences of a more serious and general nature coming under the Indian Penal Code. Consequently, the permission of the Collector to commence prosecution in such an offence is not necessary.

The result is that the Rule is discharged.

BARTLEY J. I agree.

Rule discharged.

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