

APPELLATE CRIMINAL.

The 11th July, 1881.

PRESENT :

MR. JUSTICE MUTTUSAMI AYYAR AND MR. JUSTICE TARRANT.

Eadara Virana and others
against
The Queen.*

Criminal Procedure Code, Section 469—Prosecution of witnesses in Civil Suit for forgery of document in suit—Sanction unnecessary—“ Party ” does not include witness.

The sanction required by Section 469† of the Criminal Procedure Code as a condition precedent to the prosecution of a party to a civil suit for forgery of a document given in evidence in such suit, is unnecessary in the case of persons not parties to, but witnesses in, the suit who are charged with the forgery of the document jointly with a party to the suit.

IN this case the appellants, prisoners 1, 2, 4 and 5, were convicted of forging a bond.

The first prisoner brought a suit upon this bond in the District Munsif's Court at *Ongole*. The suit was dismissed by the Munsif and the decision was confirmed on appeal by the District Judge, who, on the application of the respondent (the prosecutor), gave sanction for the prosecution of the first prisoner for forgery.

The second, fourth and fifth prisoners were attesting witnesses of the bond, and the fourth and fifth prisoners were also witnesses in the suit.

On appeal to the High Court an objection was taken to the conviction of the prisoners 2, 4, 5, on the ground that no sanction had been given by the District Court to prosecute them.

Mr. *Grant* and *T. Rama Rau* for the Appellants.

The Acting Government Pleader (Mr. *Powell*) for the Crown.

The Court (MUTTUSAMI AYYAR and TARRANT, JJ.) delivered the following

Judgment:—There does not appear to have been sufficient reason shown us for saying that the conclusion come to by the [401] Sessions Judge and the Assessors upon the evidence is incorrect. The former seems to have pointed out and carefully weighed the weak points in the evidence for the prosecution. The circumstance of the non-production of the writer of the alleged forged document by the first prisoner at the trial of the Civil Suit and his general conduct, as also the suspicious appearance of the document and the newness of the writing thereof, all corroborate to a certain extent the prosecution witnesses, who speak to the fact of the first prisoner

* Appeal 220 of 1881 against the sentence passed by H. St. A. Goodrich, Sessions Judge of Nellore, dated 10th March 1881.

† [Sec. 469 :—A complaint of an offence relating to documents described in section four

Prosecution for certain offences relating to documents given in evidence.

hundred and sixty-three, four hundred and seventy-one, four hundred and seventy-five or four hundred and seventy-six of the Indian Penal Code, when the document has been given in evidence in any proceedings in any Civil or Criminal Court, shall not be entertained against a party to such proceedings,

except with the sanction of the Court in which the document was given in evidence, or of some other Court to which such Court is subordinate.]

having attempted to get them to attest a forged document. The evidence of the defence witnesses, which has been disbelieved by the Judge and Assessors, does not seem to us to be of any great weight. Taking the whole of the circumstances into consideration, we see no reason to interfere with the decision of the Sessions Court.

On the point of want of sanction, there was admittedly sanction so far as regards the first prisoner. In the case of the second, he was not a witness in the Civil Suit and no sanction could be required. With regard to the fourth and fifth prisoners, they were merely witnesses in the Civil Suit, and we do not consider they fall within the meaning of "parties to the proceeding" used in Section 469 of the *Criminal Procedure Code*.

This leaves only the sentences to be considered. The Sessions Judge has kept in view the degrees of criminal responsibility attaching to each of the prisoners and sentenced them accordingly, and we see no reason to differ from the view taken by him.

The appeal is therefore dismissed.

NOTES.

[In (1906) 30 Mad. 226, it was held that the defendant in a Civil Suit ought not to be allowed to prejudice the trial of such suit by launching and proceeding with a criminal prosecution on the same facts against the plaintiff and his witnesses and such proceedings if launched will be stayed by the High Court in the exercise of its powers of superintendence.]

[See also 25 Mad. 671—2 Weir 173.]

APPELLATE CIVIL.

The 19th August 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE TARRANT.

Ittuni Panikkar and another.....Appellants

and

Irani Nambudripad.....Respondents.*

Act XX of 1863 not applicable to Malabar Devaswams.

The District Courts have no power to appoint trustees under Section 5† of Act XX of 1863 upon a vacancy occurring in the office of trustee, unless property has been actually transferred to the former trustee under the provisions of Section 4.

[402] THE respondent in this appeal presented a petition under Section 5† of Act XX of 1863 to the District Court of South Malabar, praying that he might

* C. M. Appeal No. 719 of 1880 against the order of H. Wigram, Officiating District Judge of South Malabar, dated 26th October 1880.

† [Sec. 5 :—Whenever, from any cause, a vacancy shall occur in the office of any Trustee, Manager, or Superintendent, to whom any property shall have been transferred under the last proceeding Section, and any dispute shall arise respecting the right of succession to such office, it shall be lawful for any person interested in the Mosque, Temple, or religious establishment, to which such property shall belong, or in the performance of the worship or of the service thereof, or the trusts relating thereto, to apply to the Civil Court to appoint a Manager of such Mosque, Temple, or other religious establishment, and thereupon such Court may appoint such manager to act until some other person shall by suit have established his right of succession to such office. The Manager so appointed by the Civil Court shall have, and shall exercise, all the powers which, under this or any other Act, the former Trustee, Manager, or Superintendent, in whose place such Manager is appointed by the Court, had or could exercise in relation to such Mosque, Temple or religious establishment, or the property belonging thereto.]