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1881
FALL
v.
MACEW

CRIMINAL REFERENCE.

Before Mr. Justice Pontifex and Mr. Justice Field.

JHUMUK NONIAH *v.* SHADASHIB ROY.*

1881
Mar. 31.

Distraint— Rent Act (Beng. Act VIII of 1869), *ss.* 72, 74, 76— *Criminal Trespass.*

A, the servant of *B*, was convicted of criminal trespass in going upon the land of *C*, one of *B*'s tenants, and preventing him from cutting his crops. *B* was convicted of abetment of criminal trespass. *A* and *B* pleaded that they were acting in the exercise of the legal right of distraint.

It appeared that no written demand under s. 72 of the Rent Act (Beng. Act VIII of 1869) for the amount of the arrears, together with an account exhibiting the grounds on which demand had been made, was served on *C*, and that no written authority under s. 76 had been given by *B* to *A*.

Held, that it lay upon *A* and *B* to show that they had conformed to the provisions of the law, or at least had acted with the *bonâ fide* intention of distraining the complainant's crops; and that the conviction was right.

Held also, that, as under s. 74 standing crops and ungathered products may, notwithstanding distraint, be reaped and gathered by the cultivator, *A* had no right, even if he was acting *bonâ fide*, to restrain *C* from cutting his crops.

THE facts of this case sufficiently appear from the judgment of the Court (PONTIFEX and FIELD, JJ.), which was delivered by

PONTIFEX, J.—In this case Shadashib Roy has been convicted of criminal trespass punishable under s. 147 of the Indian Penal Code, and Sheosahai has been convicted of abetment of criminal trespass punishable under s. 447 read with s. 109. The facts of the case appear to be as follows:—There is a dispute between Sheosahai and his tenants on the subject of rent. On the day of the occurrence, which forms the subject of these criminal proceedings, Shadashib, the servant of Sheosahai, and a number of other persons, went on the field of the complainant, and prevented him from cutting

* Criminal Reference, No. 47 of 1881 (letter No. 114), from the order of H. W. Gordon, Esq., Officiating Sessions Judge of Tirhoot, dated the 14th March 1881.

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his paddy. Shadashib was sentenced to pay a fine of Rs. 10, and his master, Sheosahai, was sentenced for abetment to pay a fine of Rs. 100. The Sessions Judge of Tirhoot, on the appeal of Sheosahai, set aside his conviction and sentence; and he has now made a reference to this Court in order to have the conviction and sentence of Shadashib Roy set aside. The Sessions Judge is of opinion, that the facts of the case as shown by the evidence do not constitute the offence of criminal trespass. We are unable to take this view of the case. It lay upon the accused persons, who set up in their defence that they were acting in the exercise of the legal right of distraint, to show that they had conformed to the provisions of the law, or at least to prove such facts as would raise a reasonable presumption that, even although they had in some respects acted illegally, still what they did was done with the *bonâ fide* intention of distraining the complainant's crops.

Under s. 72 of the Rent Act, the distrainor is bound to serve the defaulter with a written demand for the amount of the arrears, together with an account exhibiting the grounds on which the demand is made. No attempt was made to show that this was done. Under s. 76 of the same Act, if Sheosahai, instead of going himself to distrain, employed a servant to make the distress, he was bound to give such servant a written authority. No attempt has been made to show that such authority was given. There is upon the record some evidence to show that Sheosahai was only one sharer in the estate upon which the complainant was a ryot. Under the provisions of s. 68 of the Rent Act, a sharer in a joint estate in which a division of the lands has not been made amongst the sharers, is precluded from exercising the powers of distraint otherwise than through a manager authorized to collect the rents of the whole estate on behalf of all the sharers in the same. There is nothing to show that the person who is alleged to have distrained the property of the complainant in this case was the manager acting on behalf of all the sharers. We desire, however, to say that we do not give much weight to this last point in deciding the present case, as the evidence does not clearly show whether the estate in which Sheosahai

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has an interest falls within the above definition. Then, under s. 74 of the Rent Act, standing crops and other ungathered products may, notwithstanding the distraint, be reaped and gathered by the cultivator. Now the evidence shows that Shadashib Roy and the men with him prevented the complainant from cutting the paddy, and this they clearly had no right to do even if they were acting *bonâ fide* in the exercise of the power of distraint. It was said by one of the witnesses for the defence, that Sheosahai had called upon the ryots to produce receipts for the rents lodged by them in Court, and that as they failed to do so their crops were distrained. The complainant stated on oath that his receipt had been filed in a case in the Civil Court; and if this were so, this was a good reason for not producing it on demand. At the same time it is to be observed that there was on the record evidence that the rent had been lodged in Court. If it were lodged, a notice would have been given by the Court to Sheosahai under s. 47 of the Rent Act. Sheosahai did not deny having received this notice.

Having regard to all these circumstances, we think that we ought not to interfere with the conviction of Shadashib Roy, more especially as the fine imposed upon him will probably be paid by his employer, and we further think that the conviction of Sheosahai was not properly reversed.

APPELLATE CRIMINAL.

Before Mr. Justice Pontifex and Mr. Justice Field.

1881
March 29.

FAIZ ALI AND OTHERS (PETITIONERS) *v.* KOROMDI (OPPOSITE PARTY).*

Recalling Witnesses, Time for—Right of Accused to recall Witnesses for Prosecution—Criminal Procedure Code (Act X of 1872), ss. 217, 218.

Reading ss. 217 and 218 of the Criminal Procedure Code together, it appears that, if an accused person desires to recall and cross-examine the witnesses for the prosecution, the time at which he should express such desire is when the

* Criminal Motion, No. 64 of 1881, against the order of Moulvie Syud Faizoddeen Hossein, Deputy Magistrate of Mymensing, dated the 20th December 1880.