

the inquiry indicated by section 443 should cease to act, the defendant conducting his own case.

KASI DOSS
v.
KASSIM SAIT.

Wilson and King, Attorneys for defendant.

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Shephard.*

QUEEN-EMPRESS

v.

KONDA.*

1893,
March 1, 3.

*Criminal Breach of Contract Act—Act XIII of 1859, s. 2—Limitation of civil claim—
Order by the Magistrate for repayment of advances.*

In a prosecution for breach of contract under Act XIII of 1859, it appeared that the complainant had advanced certain sums of money to the accused, but that a suit to recover the same was barred by limitation; and the Magistrate thereupon dismissed the charge:

Held, that there was no reason why the Magistrate should not have ordered repayment to be made by the accused under section 2.

CASE referred for the orders of the High Court under Criminal Procedure Code, ss. 435 and 438, by J. D. Rees, District Magistrate of Nilgiris.

The case was stated as follows:

“ On the 13th April 1888 one Konda received an advance of Rs. 10 from the complainant, Tanora maistry, and agreed in writing to work with one cooly on the Guynd Estate in the Oucherlony Valley from 1st August 1888 to 31st March 1889, and it was further agreed that, in case of default in the due performance of the contract, the advancee should continue to work after the expiry of the term for as many days as he or his cooly should have neglected to work during the prescribed term.

“ The complaint in the case was filed before the Lower Court on 4th October 1892, *i.e.*, more than three years after the expiry of the contract period. The Sub-Magistrate gives the following reasons for dismissing the complaint under section 203, Criminal Procedure Code.

* Criminal Revision Cases Nos. 715 to 718 of 1892.

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“ It is now more than four years that the advance was paid,
“ and principal term of the contract expired some three years
“ ago. There seems to be no limitation prescribed for proceed-
“ ings to be taken under Act XIII of 1859 which is a *quasi* crimi-
“ nal and *quasi* civil law. The contract was, however, to do plan-
“ tation work for eight months, such period to commence appa-
“ rently at or within a reasonable time after the date of contract,
“ and it is now more than four years that the advance was paid.
“ I do not, therefore, think it desirable to take further crimina-
“ l proceedings in the case, as a suit for the recovery of the advance,
“ even in a Civil Court, is barred by limitation.

“ The accused has, no doubt, agreed to continue to work after
“ 31st March 1889 for as many days after the said date as he
“ shall have made default in the due performance of his contract,
“ but such work should be in continuation of work, commenced
“ apparently at or within a reasonable period after the date of
“ contract as observed above.

“ The clause ‘to continue to work, &c.,’ seems to have been
“ inserted only with the view that criminal action can be taken at
“ any future time. The Contract Act is already of a stringent
“ nature, and to enforce a contract after a lapse of a long time,
“ and perhaps at any time within the last living day of the
“ accused, could not have been the intention of the legislature.

“ In criminal revision cases Nos. 773 of 1883 and 183 of 1884
“ it was laid down by the High Court that no action would lie
“ under Act XIII of 1859 in cases where the specified period of
“ contract had expired.

“ It was probably with a view to evade the principles thus
“ enunciated that the form of contract in the case now under
“ reference which is widely used throughout this district was
“ drawn up. The contract in question binds the advancees to
“ continue to work for as many days after the expiration of the
“ original term of contract as they shall have failed to work upon
“ during the prescribed period. A test case was submitted to the
“ High Court in 1884, and in criminal revision case No. 651 of
“ 1884 it was ruled that the additional stipulation thus intro-
“ duced was a legal one and could be enforced.

“ Although the High Court has determined in *Kittu in re*(1)

“ that the law of limitation does not apply to Act XIII of 1859
 “ any more than it does to any other penal statute, yet in view of
 “ the fact that in the case now under reference the remedy
 “ sought for is against the person and not the pocket of the
 “ advancee, and that it would appear that there is nothing in con-
 “ tracts of the sort now under reference to prevent criminal action
 “ being taken against advancees, after the lapse of many years
 “ from the date of the execution of the contract, and that too,
 “ even though the contract may have been performed almost in
 “ its entirety, I venture to bring the present case to the notice of
 “ the High Court.

“ The present case is by no means an isolated one. I submit
 “ the records of three other cases (Nos. 37, 92 and 93 of 1892) on
 “ the file of the same Magistrate which have been dismissed on
 “ similar grounds and to which my attention has been called by
 “ the Sub-Divisional Magistrate.

“ I think the order of dismissal was equitable, but doubt if it
 “ is legal.”

The Acting Government Pleader and Public Prosecutor
 (*Subramanya Ayyar*) in support of reference.

JUDGMENT.—In these cases the Magistrate dismissed the
 charge laid under section 2 of Act XIII of 1859 on the ground
 that the term for which the contract between the parties had been
 made had expired. In our opinion this affords no reason why
 the Magistrate should not have adopted the alternative course
 provided in section 2, and have directed the accused to repay the
 money advanced or such part thereof as might seem to the
 Magistrate just. The mere fact that the advance was made so
 long ago that the money could not be recovered by action is
 in our judgment no sufficient ground for refusing altogether to
 give effect to the penal provision of the Act.

In cases in which there has been great or unexplained delay
 on the part of the complainant the Magistrate can use his dis-
 cretion as to the amount which he may direct to be repaid. The
 orders of dismissal are set aside and the Magistrate directed to
 proceed according to law.
