

Mayan(1), *Ravuni Menon v. Kunju Nayar*(2), *Punchannun Bundopadhya v. Rabia Bibi*(3), *Nimba Harishet v. Sitaram Paraji* (4), *Mulmantri v. Ashfaq Ahmad*(5), and *Seth Chand Mal v. Durga Dei*(6).

UPENDRA
BHATTA
v.
RANGANATHA
BHATTA.

We must hold that the District Judge had jurisdiction to entertain the appeal and dismiss this revision petition with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

QUEEN-EMPRESS

v.

BUTCHI.*

1893.
May 5.

Penal Code—Act XLV of 1860, s. 378, illustration (o)—Theft—Whether a dishonest removal by a wife of her husband's property left in her custody amounts to theft.

There is no presumption of law that a wife and husband constitute one person in India for the purpose of criminal law. If the wife, removing her husband's property from his house, does so with dishonest intention, she is guilty of theft.

CASE referred for the orders of the High Court under section 438 of the Criminal Procedure Code by A. W. B. Higgins, District Magistrate of Gódvári, in his letter dated 23rd February 1893, No. 89.

In this case a married woman, during the absence of her husband in Burmah, removed his movable property left in her charge from his house to the house of her paramour with whom she was residing. The husband on his return charged the wife and her paramour with theft. The Second-class Magistrate convicted both of theft, but the Deputy Magistrate, on appeal, acquitted the wife on the strength of illustration (o) to section 378 of the Indian Penal Code, which he interpreted as meaning that the paramour, and not the wife, should be treated as the thief in such cases.

On this the District Magistrate referred the case for the orders of the High Court.

(1) I.L.R., 7 Mad., 255. (2) I.L.R., 10 Mad., 117. (3) I.L.R., 17 Cal., 711.
(4) I.L.R., 9 Bom., 458. (5) I.L.R., 9 All., 605. (6) I.L.R., 12 All., 313.

* Criminal Revision Case No. 88 of 1893.

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The *Acting Government Pleader and Public Prosecutor (Subramanya Ayyar)* for the Crown.

JUDGMENT.—There is no presumption of law that the wife and husband constitute one person in India for the purposes of criminal law. Theft is an offence against property, and where there is no community of property, each may commit theft in regard to the property of the other. The question is one of intention. If the wife, removing the husband's property from his house, does so with dishonest intention, she is guilty of theft. Her joint possession may in many cases give rise to a presumption that she had authority from her husband to give the property, but this is a presumption of fact, and it may be rebutted. The intent with which the husband's property is removed is a question of fact, and where a dishonest conversion is intended, it clearly amounts to theft.

We set aside the Deputy Magistrate's order acquitting the first accused and direct that the appeal so far as she is concerned be restored to the file and disposed of with reference to the above observations.

APPELLATE CRIMINAL.

Before Mr. Justice Parker and Mr. Justice Best.

QUEEN-EMPRESS

v.

ABBI REDDI (AND ANOTHER).*

Criminal Procedure Code—Act X of 1882, ss. 531, 532 and 537—Commitment to Sessions Court by Magistrate having no jurisdiction over place where alleged offence was committed—Exercise of powers duly conferred.

A Magistrate who commits a case for trial by a Sessions Court does so in the exercise of powers duly conferred upon him, and the fact that he had no territorial jurisdiction over the place where the alleged offence was committed, and that an objection to the committal on this ground was taken before the commitment, is no ground for the Court to which the commitment is made quashing it under section 532 of the Criminal Procedure Code.

The Queen-Empress v. James Ingle(1), followed.

* Criminal Appeals Nos. 36 and 37 of 1894. (1) I.L.R., 16 Bom., 200.

THE facts of the case appear sufficiently for the purpose of this report from the following judgments of the High Court.

Pattabhirama Ayyar for appellants.

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The *Government Pleader* and *Public Prosecutor* (Mr. *Powell*) in support of the conviction.

PARKER, J.—I do not think we are bound to set aside the conviction and sentence of the Sessions Court merely on the ground that the committing Magistrate had no territorial jurisdiction over the place in which the offence is alleged to have been committed. The order of commitment was an order under section 531, Criminal Procedure Code, and is not liable to be set aside because the proceedings were taken in a wrong place, unless the error occasioned a failure of justice. The Magistrate was himself empowered to commit to the Sessions, and did not in so doing usurp an authority to which he was not entitled. I do not think section 532, Code of Criminal Procedure, applies. See *The Queen-Empress v. James Ingle*(1). Nor am I of opinion that the institution of proceedings in the wrong sub-division has occasioned a failure of justice. The Sessions Court which tried the case had territorial jurisdiction, even though the committing Magistrate had not. Under section 537, Code of Criminal Procedure, we should not be justified in reversing the sentence on account of the irregularity previous to the trial.

BEST, J.—Before proceeding to the merits of this appeal, a legal objection to the validity of the trial has to be considered.

It is urged on behalf of appellants that the Joint Magistrate, by whom the case was referred to the Second-class Magistrate for inquiry with a view to the committal of the case for trial by the Sessions Court was without jurisdiction in the case, and that, as the objection was taken before the commitment, the commitment ought to have been quashed under section 532 of the Code of Criminal Procedure.

The section is as follows: "If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless

(1) I.L.R., 16 Bom., 200.

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“ during the inquiry and before the order of commitment objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

“ If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment and direct a fresh inquiry by a competent Magistrate.”

The words ‘purporting to exercise powers duly conferred’ at the beginning of this section appears to me to have reference to section 206 of the Code, and to signify ‘power to commit for trial,’ and, as all Magistrates in this presidency are empowered to commit to the Court of Session, I am of opinion that this objection must be disallowed. There can be no doubt that the Sessions Court of the North Arcot District is the proper Court to which the case should have been committed, and, as the commitment, even if irregular, cannot have prejudiced the accused, the objection must be further disallowed with reference to the provisions of section 537 of the Code.

Seeing no reason to differ from the finding arrived at by the Judge and assessors we dismiss these appeals.

Ordered accordingly.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

KRISHNA CHADAGA (PLAINTIFF), APPELLANT,

v.

GOVINDA ADIGA (DEFENDANT), RESPONDENT.*

Revenue Recovery Act—Madras Act II of 1864, s. 11—Whether gathered products belonging to a tenant can be distrained by Government on account of the landlord's arrears of revenue.

Government can attach for arrears of revenue under section 11 of Madras Act II of 1864 the gathered products belonging to a tenant, provided that the products are of the land on account of which the arrears of revenue have accrued.

CASE stated under section 617 of the Civil Procedure Code by W. C. Holmes, District Judge of South Canara, in appeal suit No. 339 of 1892.

* Referred Case No. 138 of 1893.