

SRINIVASA-
BAGAVA
AYYANGAR
v.
MUTTUSAMI
PADAYACHI.

the lands as against the then landlord. It merely decided that the present plaintiffs (then second and third plaintiffs) had not then obtained registration of their title under the registered landlord, and that they could not maintain a suit to enforce acceptance of patta until such registration had been made. The registration was made in 1884 and by that registration the plaintiffs for the first time obtained a complete title on which to enforce acceptance of pattas. There is no evidence that the possession by the tenants was at any time hostile to the plaintiffs or their vendor. The mere omission to collect rent does not make the tenancy hostile.

We must reverse the decree of the District Judge and restore that of the Sub-Collector. The plaintiffs must have their costs throughout.

APPELLATE CRIMINAL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

QUEEN-EMPRESS

v.

ABDUL KADAR SHERIFF SAHEB.*

Criminal Procedure Code, ss. 195, 433—Abetment of an offence, s. 109, Penal Code—Sanction to prosecute unnecessary.

Though sanction to prosecute is necessary in cases falling under the sections of the Penal Code set forth in section 195, Criminal Procedure Code, no such sanction is required previous to the prosecution of a person charged with the abetment of such offences.

CASE stated for the opinion of the High Court by W. E. Clarke, Acting Chief Presidency Magistrate, in calendar case No. 18351.

The case was stated as follows :—

“ One Beejan Bi accused one Hyath Bi of criminal breach of trust in calendar case No. 3732 of 1896 on the file of this Court. Accused was discharged under section 253, Criminal Procedure Code. Hyath Bi subsequently in calendar case No. 5988 of 1896 applied for sanction to prosecute Beejan Bi and one Abdul Kadar Sheriff who was alleged to have abetted Beejan Bi to

* Criminal Referred Case No. 1, of 1896.

“bring a false charge against Hyath Bi. This Court, after inquiry, sanctioned the prosecution of Beejan Bi for bringing a false charge, but, thinking that a sanction was unnecessary to support an action for abetment of an offence under section 211, Penal Code, declined to grant sanction to prosecute the alleged abettor. Subsequently Beejan Bi complained of Abdul Kadar Sheriff having abetted an offence under section 211, Penal Code, and this Court issued a summons against the said Abdul Kadar Sheriff. It is now argued no proceedings will lie against Abdul Kadar Sheriff for abetment of an offence under section 211, Indian Penal Code, without sanction. I have now the honour to solicit an opinion as to whether abetment being a substantive offence punishable under sections of the Penal Code other than those mentioned in section 195, clause (b) of the Criminal Procedure Code, sanction is necessary before a Court can take cognizance of such an offence as abetment of an offence under section 211, Indian Penal Code. I make this reference, as I am asked to do so, and the point seems one of importance regarding which a definite ruling would be of advantage to the public.”

QUEEN-
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The Crown Prosecutor (Mr. R. F. Grant) for the Crown.

Srinivasuragava Chariar for complainant.

Mr. Ramasami Raju for the accused.

OPINION.—The abetment of an offence is an offence of itself and is punishable under separate sections of its own. None of those sections is mentioned in clause (b) of section 195 of the Code of Criminal Procedure, and therefore sanction need not be obtained in respect to them.

The fact that the Legislature has not included in section 195 the sections of the Penal Code relating to abetment is probably due to the circumstance that in the generality of cases the facts connected with the abetment are not likely to come before the Court.

The costs of this reference must be paid by the accused at whose instance it was made.