

APPELLATE CRIMINAL.

*Before Sir Arnold White, Chief Justice, Mr. Justice Davies and
Mr. Justice Benson.*

IN THE MATTER OF ANUSOORI SANYASI, ACCUSED.*

1904.
April 18, 21.

Criminal Breach of Contract Act—XIII of 1859, s. 2—Complaint against workman of failure to complete work—Completion of work by complainant prior to complaint—Maintainability of charge.

An employer applied for an order under section 2 of Act XIII of 1859, alleging that a workman had received an advance on account of the work and had failed to perform his part of the contract. Prior to lodging the complaint, the employer had completed the work, and he claimed an order for the repayment of the advance :

Held, that no order could be made. The section only applies when the work is uncompleted when the complaint is made. If the work has been completed when the complaint is made, the Magistrate has no jurisdiction under the section, though the employer has a remedy against the workman in the Civil Courts.

High Court Proceedings, dated 29th March 1885 (Weir's 'Law of Offences,' 445), approved.

The offence created by the act is *not* the neglect or refusal of the workman to perform his contract but the failure of the workman to comply with an order made by the Magistrate that the workman should repay the money advanced or perform the contract.

King Emperor v. Takasi Nukayya, (I.L.R., 24 Mad., 660), approved.

CHARGE by an employer against a workman under Act XIII of 1859. The facts of the case appear from the following judgment of the Stationary Sub-Magistrate :—

“The complaint in this case is that the accused, having contracted with the complainant to cut survey stones and having received an advance for it from him, failed to fulfil the contract completely under section 2 of Act XIII of 1859.

“The complainant, who is the first witness, says that the accused executed a contract bond in his favour on 10th June 1902 binding himself to cut survey stone required by him within a fortnight and received an advance of Rs. 64 then, that, for this amount of advance, the accused worked and discharged his liability, that after this he again advanced to him on different

* Case referred No. 16 of 1904 (Criminal Revision Case No. 67 of 1904) for the orders of the High Court under section 438 of the Code of Criminal Procedure by F. H. Hamnett, Esq., Sessions Judge of Godavari, in his letter, dated 29th January 1904, No. 470.

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occasions about Rs. 100 on condition that the accused might do the same work for three months more, but that the accused, having worked only a few days, went home as he fell ill and did not return to work again and that consequently he (complainant) completed his work some five or six months ago. The complainant says that he does not require the accused to work for him now as his work was completed but requires that the accused be ordered to repay him about Rs. 80 of advance still due to him.

“As the work for which this contract was entered into and the money advanced by the complainant was completed long prior to this complaint, this Act does not apply to this case(1).

He acquitted the accused under section 245 of the Code of Criminal Procedure. The Sessions Judge referred the case to the High Court after giving notice to the accused to show cause why it should not be reopened and tried on its merits.

ORDER—Sir ARNOLD WHITE, C.J.—In this case the complainant applied for an order under section 2 of Act XIII of 1859 alleging that the accused had contracted with him to cut stones, had received an advance on account of the work, and had failed to perform his contract. The Magistrate declined to make an order against the accused on the ground that the work for which the contract was entered into was completed prior to the complaint. I think the Magistrate was right.

Section 2 of the Act empowers the Magistrate, at the option of the complainant, either to order that the money advanced be repaid, or that the work be performed. I think the section only applies when the work is uncompleted when the complaint is made. In my opinion, if the work has been completed when the complaint is made, the Magistrate has no jurisdiction under the section. In other words, an employer, by doing the work himself or employing a third party to do it for him, loses his right to proceed under the section. In such a case the employer's civil remedy is, of course, open to him but he cannot avail himself of the penal enactment. I agree with the ruling of this Court(1). The records in that case show that the work was in fact completed by the party who made the contract but the ground of the decision was that the Act had no application

(1) High Court Proceedings, dated 29th March 1865, Weir's 'Law of Offences,' 445.

where the work had actually been completed at the date of the complaint. It seems to me that the case *In re Kitter*(1) has no bearing on the present case. I agree that limitation is no bar to a claim which a Magistrate has jurisdiction under the Act to enforce. In the present case there was, in my opinion, no enforceable claim.

Technically the Magistrate was wrong in acquitting the accused. The offence created by the act is not the neglect or refusal of the workman to perform his contract but the failure of the workman to comply with an order made by the Magistrate that the workman repay the money advanced or perform the contract (see *King-Emperor v. Tukasi Nukayya*(2)). In effect, however, the Magistrate declined to make any order against the accused.

I see no reason to interfere.

DAVIES, J.—I entirely agree with the learned Chief Justice. The plain object of the Act is to provide a speedy remedy when the work is not done. The complainant having got the work done had no ground for invoking the aid of the Magistrate. In other words he has put himself out of Court.

BENSON, J.—I cannot say that the ruling referred to by the Sessions Judge and reported in Weir's 'Law of Offences,' p. 455, is not in accordance with the strict letter of the Act. Section 2 presupposes that, at the time when the defaulter is brought before the Magistrate, the complainant has an option either to demand back his advance or to get an order to have the work completed.

But, if the work has been already completed, the complainant cannot ask for an order to have it completed. He has therefore no option, and the condition presupposed by section 2 does not exist, and the remedy by the Act cannot be applied.

It is true this view restricts the scope of the Act in a way for which I can see no reasonable ground, and shows that the Act fails to deal effectively with the mischief which the preamble recites that it is intended to remedy, but, as the Act is a penal Act, it must be construed strictly and in favour of the subject. The strict interpretation of the words of the Act is that stated above. If the Legislature considers that the Act as at present worded does not give effect to the true intention of the Legislature, the remedy is to amend the wording of the Act.

(1) I.L.R., 11 Mad., 332.

(2) I.L.R., 24 Mad., 660.