

and that appeal was disposed of on 19th September, being two days after the expiration of the six months during which the prosecution should have been commenced. An extension of time was now applied for.

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SERVA-
GARAN
v.
SINNA
GOUNDER.

T. R. Venkatarama Sastri for petitioners.

ORDER.—Sanction for prosecution was granted on 17th March 1902. The six months during which the sanction remained in force [section 195 (b), Criminal Procedure Code] expired on 17th September 1902. The parties against whom the sanction was granted appealed from the order granting the sanction, but this appeal was not disposed of till 19th September, two days after the expiration of the six months.

Following the decision of this Court in *Ramudu Chetty v. Rungasawmy Chetty* (1) I hold that good cause has been shown for extending the time and I extend it to 10th January 1903.

APPELLATE CRIMINAL.

*Before Mr. Justice Subrahmaniam Ayyar, Mr. Justice Davies
and Mr. Justice Benson.*

SUBUDHI BANTHO AND FIFTEEN OTHERS (PETITIONERS)

v.

BALARAMA PUDI (COUNTER-PETITIONER).*

1902,
December 11.

Penal Code—Act XLV of 1860, s. 424—Dishonest removal by tenants of crops—Ryots holding on varam tenure—Crops in possession of ryots—No taking out of possession—Offence.

If ryots holding land on varam tenure remove crops for the purpose of protecting them from injury or damage owing to delay or refusal on the part of the Zemindar to perform his part in the harvesting or division, such a removal would not be dishonest within the meaning of section 424 of the Indian Penal Code. But where it is proved that the crops have been removed dishonestly, or

(1) Crl. Mis. Petition No. 78 of 1901 (unreported).

* Criminal Revision Case No. 78 of 1902, presented under sections 436 and 439 of the Code of Criminal Procedure, praying the High Court to revise the judgment of R. Govinda Row Naidu, General Deputy Magistrate of Gunsur, in Criminal Appeal No. 24 of 1901, presented against the finding and sentence passed by Upendra Patnaik, Second-class Magistrate of Aska, in Criminal Case No. 71 of 1901.

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fraudulently, an offence is committed under section 424, even though the Zemindar, under the terms of the tenancy, acquires no property in the share due to him until the ryots have delivered it to him.

CHARGES of theft and of being members of an unlawful assembly, against nineteen tenants of the Zemindar of Chinna Kemedi. The facts as found by the Second-class Magistrate were as follows:—

“The Zemindar of Chinna Kemedi is entitled as landlord to a share of the produce of the village of Kullangi and the defendants Nos. 1 to 19 as tenants fully admit the title of the Zemindar. The Zemindar either takes the share of the produce directly from the tenants or leases it out to a third man for a money rent. For Fasi 1310 he leased the village to one Sukkuru Narnsa Subudhi and others. The renters were in enjoyment of the lease for 9 months of the fasi but were not obeyed by the tenants for the rest of the fasi. The tenants cut the paddy crop and heaped it as they liked contrary to custom prevailing in all mustajary villages in the zemindari and tried to cause loss to the mustajary or renters. The renters finding their authority set at naught by the tenants relinquished their lease to the Zemindar. There was no lease executed except an order from the Zemindar to the ryots to give the landlord's share to the renters, and the Zemindar had to accept the relinquishment and sent his own servants, (1 P.W.), Balam Padhi, being one of them, to look after the crop. The 1st P.W. went to the village and finding every thing in disorder, put seals of the Zemindar on all the paddy heaps as a sign that either party should not tamper with them. Then again Budnikayala Bala-kristnamma Subudhi was sent by the Zemindar with a similar order to the tenants and he asked the tenants to thresh the crop, but they refused to do so, saying that they wrote a registered letter to the Zemindar about the matter and that they would not act as he wanted them to do. The renter went away and represented to the Zemindar that the tenants did not obey him. He also relinquished the village, as he says. The tenants (defendants Nos. 1 to 19) threshed the paddy at last on 20th April last and carried it away. The other defendants, it is said, directed them to thresh the paddy and carry it away.”

The Magistrate also found that certain allegations made by the accused against the Zemindar in petitions sent to the Collector and the police, were not true and contained statements that were false; also that the accused were responsible for delay which had

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occurred in threshing the paddy; also that their action in carrying away the paddy was not *boni fide*. He convicted fifteen of the accused and sentenced them to pay fines, with imprisonment in default. The accused appealed to the General Deputy Magistrate of Gunsur, who dismissed the appeals and confirmed the sentences.

The accused preferred this criminal revision petition.

T. Rangachariar and *V. Ramesam* for petitioners.

ORDER.—This is not the case of a farm labourer or cultivator for wages, nor that of a person entitled to the crops jointly with others as partners. It is the case of an ordinary ryot in a zemindari holding on a varam tenure. Until the delivery by the tenant to the Zemindar of the share of the crop payable to the latter, the possession of the whole crop, inclusive of such share, is clearly with the tenant. This being so, the removal of even the whole crop by the tenant is not a taking of anything out of the possession of the Zemindar. Consequently the first element in the offence of theft is wanting. But the removal, if dishonest or fraudulent, constitutes an offence under section 424 of the Penal Code, even if, as contended for the petitioners, the Zemindar acquires no property in the share due to him until delivery, a point on which it is unnecessary for us to express an opinion in the present case. None of the unreported cases to which our attention has been drawn conflict with this view. If the removal was for the purpose of protecting the ryot from injury or damage to the crops owing to the Zemindar's delay or refusal to perform his part with reference to the harvesting and division of the crop, such removal would of course not be dishonest. But in this case it has been proved that the crops were removed dishonestly and we are not prepared to say that that finding is not well grounded. The result is that we alter the conviction from theft under section 379, Indian Penal Code, into one under section 424 of the Penal Code, leaving the conviction under section 143 to stand. We see no reason to interfere with the sentences.