

notification, in the publication of which there was consequently considered to be an irregularity. This course must be adopted here. There can be no doubt that a substantial rumour that the High Court had ordered that the sale should not proceed was calculated to affect the freedom with which intending bidders would be tempted to come forward and offer bids, if they possessed a knowledge that the whole proceedings were likely to be rendered infructuous in consequence of the order already made.

In this case also the auction lists printed in Civil Miscellaneous Appeal No. 211 of 1911 show that the plaintiff's wakil was the only bidder on the 20th and 21st July. I therefore think that there is ground to suppose that the judgment-debtors sustained substantial injury by the properties sold on these two days being knocked down to the plaintiff. The Subordinate Court may also be treated as having acted without jurisdiction when it continued a sale which the High Court had ordered to be stopped. I would allow both these appeals to the extent of setting aside the sales held on July 20th and 21st, and I would order the parties in these appeals to bear their respective costs in both Courts in consideration of the obstructive attitude of the judgment-debtors throughout the execution proceedings.

RAMANATHAN
ARUNA-
CHELLAM.
SPENCER, J.

APPELLATE CRIMINAL.

Before Mr. Justice Sadasiva Ayyar.

*Re K. R. LEWIS (SECOND ACCUSED), PETITIONER.**

1913.
December 12.

Indian Penal Code (XLV of 1850), ss. 40 and 79—Madras Forest Act (V of 1882), offence under—Justification, plea of, not available.

The plea of justification provided by section 79 of the Indian Penal Code (XLV of 1860) is available only for an offence punishable by the Penal Code and not for offences punishable by any special or local law and hence the belief of the accused that he was justified in his act does not exculpate him from punishment for his guilt under section 21 of the Madras Forest Act.

Emperor v. Kassim Isah (1912) 14 Bom. L.R., 365, dissented from.

In re Penchul Reddi (1899) 9 M.L.T., 216, followed.

* Criminal Revision Case No. 274 of 1913.

Re
LEWIS.

PETITION under sections 435 and 439 of the Criminal Procedure Code (Act V of 1898), praying the High Court to revise the judgment of G. W. WELLS, the Acting First-class Joint Magistrate of Coondapoor division, in Criminal Appeal No. 51 of 1912, preferred against the conviction and sentence passed by D. VASUDEVA RAO, the Stationary Second-class Magistrate of Coondapoor taluk.

The first accused applied for darkhast of certain forest land but did not actually obtain the lands on dharkhast. Believing he obtained them he assigned to the second accused for valuable consideration the right to cut the trees in the forest. The second accused then got the trees cut by means of coolies. The second accused was charged under section 21 of the Madras Forest Act and convicted of cutting, without permit, the trees and the first accused was charged and convicted of having abetted the same and the convictions and sentences were confirmed, though both the accused pleaded that they believed that the land was assigned to the first accused on darkhast.

The second accused preferred this revision petition.

K. Ramanatha Shenai and *K. Sundara Rao* for the petitioner.

C. Sidney Smith for the public prosecutor for the Crown.

ORDER.—I do not think that the principle of section 79 of the Indian Penal Code should be applied to an offence created by the Forest Act for the protection of the Government Revenue and of property belonging to Government. Section 79 itself cannot apply as the definition of offence in section 40 covers only "a thing made punishable" by the Indian Penal Code, except when the word is used in certain sections which do not include section 79.

I therefore dissent from *Emperor v. Kassim Isub* (1) and hold following *In re Penchul Reddi* (2), that the belief of the accused that he was justified in his act cannot exculpate him from punishment for any of the offences created by section 21 of the Madras Forest Act.

As regards the second accused's having been guilty of only the abetment of the offence charged against him because those who actually cut the forest trees were coolies, the second accused admitted that he was wholly responsible for the cutting and he

(1) (1912) 14 Bom. L.R., 365.

(2) (1899) 9 M.L.T., 216.

did not deny that he was present at the cutting though he did not wield an axe himself (see section 114, Indian Penal Code). I am not disposed in revision to allow him for the first time to raise this plea on the allegation that he made a mistake in not raising it before. Even if he is allowed to raise such a technical plea, it would only necessitate a fresh prosecution for abetment and a conviction for that offence.

As regards the sentence, the records clearly show that second accused (petitioner) had no dishonest intention and he had even parted with a large sum of money to the first accused to acquire the right of cutting the trees. I therefore think that a nominal sentence is sufficient (my authority is the same case *In re Penchul Reddi*(1) already quoted by me) and I reduce the sentence on him to a fine of Rs. 5 and order the refund of the balance of whatever amount (if any) has been levied from him.

Rs
LEWIS.
SADASIVA
AYYAR, J.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and
Mr. Justice Spencer.

A. SUBBARAYUDU AND TWO OTHERS (DEFENDANTS),
PETITIONERS,

1913.
December 16.

v.

T. LAKSHMINARASAMMA (DIED) AND ANOTHER
(PLAINTIFF AND HER LEGAL REPRESENTATIVE), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), O. XXI, r. 89—Sale of immoveable property in Court auction—Subsequent private sale by judgment-debtor—Application by judgment-debtor to set aside auction sale—No locus standi to apply—Order rejecting application—Revision petition to High Court under Civil Procedure Code (Act V of 1908), sec. 115—Not maintainable though order erroneous.

Where after a sale in Court auction of certain immoveable property, the judgment-debtor sold all his rights in the same property to a stranger by a private sale, and subsequently applied under Order XXI, rule 89, of the Code of Civil Procedure (Act V of 1908) to set aside the auction sale.

(1) (1899) 9 M.L.T., 216.

* Civil Revision Petition No. 1026 of 1912.