

APPELLATE CRIMINAL.

Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice and Mr. Justice Woller.

1923,
October 4.

S. TIRUMALA REDDI (ACCUSED IN CALENDAR CASE No. 215 OF 1923, ON THE FILE OF THE COURT OF THE SECOND CLASS MAGISTRATE OF GUDIYATTAM).*

Village Panchayat Court—Accused refusing to plead—section 179, Indian Penal Code (Act XLV of 1860) whether applicable—Procedure—Madras Village Panchayat Act (Madras Act II of 1920), rule 36—Provisions same as under Criminal Procedure Code (Act V of 1898).

An accused person is not bound to answer questions put to him by the Court and is therefore not liable to a prosecution under section 179 of the Indian Penal Code (Act XLV of 1860) for refusing to answer them. The procedure when an accused person declines to plead before a Village Panchayat Court, is laid down in rule 36 of the rules made under section 78 of the Madras Village Panchayat Act (Madras Act II of 1920), and is precisely the same as that provided for by the Criminal Procedure Code, in respect of other Courts.

CASE referred for the orders of the High Court, under section 438 of the Criminal Procedure Code, by J. C. MOLONY, District Magistrate of North Arcot, Vellore, in his letter, dated 14th May 1923.

The facts are stated in the Judgment.

V. L. Ethiraj, on behalf of the Public Prosecutor, for the Crown.

JUDGMENT.

SCHWABE,
C. J.

SCHWABE, C.J.—This is a reference by the District Magistrate of North Arcot, under section 438 of the Code of Criminal Procedure, in relation to a conviction by the Sub-Magistrate of Gudiyattam of one Tirumala Reddi under section 179 of the Indian Penal Code, he being fined Rs. 10, in default seven days' simple imprisonment.

* Criminal Revision Case No. 255 of 1923.

The facts appear to be that the accused had been summoned for some offence before the Village Panchayat Court at Kandiapedu, he being charged with instigation to beat. On being charged before that Court, he said he would not make any reply and remained silent. The Panchayat Court thereupon sanctioned the prosecution of the accused under section 179 of the Indian Penal Code. Section 179 runs

“Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished.”

The procedure before the Panchayat Court is governed by the Madras Act II of 1920 and the rules made in pursuance of section 78 of that Act. The rules have been published and are to be found in Government Order No. 572 of 1920, dated the 2nd of March 1920, published in the *Fort St. George Gazette*. By rule 36

“If the accused pleads not guilty or declines to plead, the Court shall proceed to examine the complainant, if any, the witnesses for the prosecution and the witnesses of the accused.”

Those rules make the procedure of this Bench Court precisely the same in respect of the pleading of the accused as the provisions of the Criminal Procedure Code which apply to other Courts in this country. As far as this matter is concerned, they come to this, that an accused is not bound to answer any question put to him at all and can, if he likes, decline to plead, and, if he declines to plead, the case goes on just the same. In my judgment, section 179 of the Indian Penal Code has nothing whatever to do with the conduct of accused persons in Court. What they have to do and what they have not to do is provided by the Code of Criminal Procedure, where it applies, and by the rules governing a Panchayat Court where they apply. This conviction of the accused under section 179

In re
TIRUMALA
REDDI.
—
SCHWABE,
C.J.

In re
TIRUMALA
REDDI.
—
SCHWABE,
C.J.

of the Indian Penal Code was entirely wrong. No offence under that section has been committed. The order of conviction must, therefore, be set aside and the fine, if paid, must be refunded.

Panchayat Courts have got ample powers to deal with such cases. They can simply go on with the case. Having heard the evidence, if they choose to convict, their conviction will be perfectly in order, although the accused has failed to plead and although the accused by his demeanour has been contemptuous of the Court which has been trying him.

WALLER, J. WALLER, J.—I agree to the order proposed. It is quite clear that section 179 of the Indian Penal Code has no application to a refusal to plead to a charge.

D.A.R.

APPELLATE CIVIL.

*Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice,
and Mr. Justice Ramesam.*

VELAMAKANYA KRISHNAIYA (APPELLANT),

v.

PONNUSWAMI AIYAR AND ANOTHER (RESPONDENTS).*

Equitable mortgage—Unregistered document evidencing the mortgage, admissibility of.

To ascertain whether an unregistered document creates an equitable mortgage, the test is whether it constitutes the bargain between the parties, i.e., whether it records a contemporaneous loan and deposit of title-deeds or whether it merely records an already completed transaction of loan and deposit. It is only in the former case the document is inadmissible for want of registration. *Subramonian v. Lutchman*, (1923) I.L.R., 50 Cal., 338 (P.C.) and *Shaw v. Foster*, (1872) 5 H.L., 321, followed.

ON APPEAL from the Judgment of the Hon'ble Mr. Justice PHILLIPS, dated 3rd March 1922, passed in the exercise of

* Original Side Appeal No. 54 of 1922.