1886

ABDUL HAYAI KHAN v. CHUNIA KUAR.

appeal to the Judge that officer affirmed the order, and the judgment-debtor has preferred a second appeal to this Court.

We think our original order of the 25th November, 1885, must stand. The decree, as it originally stood, was in accordance with the judgment. The Court had no power to alter it as it did, and the proceeding is further irregular, in that no notice was given to the opposite party as required by s. 206. But a further contention on the part of the decree-holder is, that a question of this kind cannot be entertained in the execution-department; that the decree must stand as altered, and is not open to an inquiry whether it was properly altered when proceedings in execution are being taken. In our opinion this contention is not valid. We think that when a decree-holder executes his decree, a judgment-debtor is competent to object that the decree is not the decree of the Court fit to be executed, and therefore not capable of execution; and we think he could in this case raise the question whether the decree, which was altered behind his back, was a valid decree and fit to be executed. On these grounds our order on this application is similar to the order we made in November, 1885, setting aside the execution proceedings with costs.

Appeal allowed.

1886
May 22

CRIMINAL REVISION.

Before Mr. Justice Straight, Offg. Chief Justice.

QUEEN-EMPRESS v. MAHESHRI BAKHSH SINGH.

Act XLV of 1860 (*Penal Code*), *s* 189—*Threat of injury to public servant—Necessity of proving actual words used.*

In a prosecution for an offence under s. 189 of the Penal Code, the witnesses differed as to the exact words used by the prisoner in threatening the public servant, though they agreed as to the general effect of those words. The Magistrate, however, considered that the offence was clearly proved, and convicted the prisoner. The Sessions Judge, on appeal, affirmed the conviction, observing that it was immaterial what the words used were, and that the intention and effect of the words were plain.

Held that the Judge was mistaken in regarding it as immaterial what the words used actually were, and that, on the contrary, it was most material that those words should be before the Court to enable it to ascertain whether in fact a threat of injury to the public servant was really made by the accused.

THIS was an application for revision of an order of Mr. F. E. Elliot, Sessions Judge of Allahabad, dated the 1st May, 1886,

affirming an order of Mr. P. Gray, Joint-Magistrate of Allahabad, dated the 1st April, convicting the applicant of an offence punishable under s. 189 of the Penal Code, and sentencing him to three months' rigorous imprisonment and Rs. 25 fine, or, in default, two months' further rigorous imprisonment. The applicant was charged with having threatened one Niamat Ali, head-constable of Karchana, for the purpose of deterring him from the proper exercise of his functions as a public servant. The case for the prosecution was that on the evening of the 28th December, 1885, the head-constable was inquiring into a burglary which had taken place the night before in the house of one Mata Dín, and was questioning certain persons of suspicious character, when the accused came up and threatened him by saying that these persons were his ryots, and if they were questioned further, he (the accused) would make a complaint about him. The head-constable deposed that the accused also threatened another constable by saying that he could have him deprived of his badge of office; but the constable in question stated that he had heard no such threat. The other witnesses for the prosecution differed from the head-constable as to the exact words used by the accused to the latter, though they agreed as to the general effect of those words. The Joint-Magistrate was of opinion that the offence specified in s. 189 of the Penal Code was clearly proved, and convicted and sentenced the applicant as above-mentioned. On appeal, the Sessions Judge observed :—"It does not matter what the words used were. The witnesses do not agree as to the exact words used. We must look to the intention with which the words were used and the effect they had. It is perfectly plain to me that the intention was to intimidate the police-officer, and so to deter him from doing his duty; and it is in evidence that though the officer was not deterred from proceeding with his inquiry, the investigation was seriously hindered and impeded by the attitude taken by the appellant. Under these circumstances the Magistrate's order was, in my judgment, fully justified, and I therefore affirm both the conviction and sentence."

It was contended on behalf of the applicant that in the absence of proof of the exact words used and complained of, the conviction under s. 189 of the Penal Code was improper.

1886

QUEEN-EMPRESS v. MAHESHRI BAKHSH SINGH.

Lala *Lalta Prasad*, for the applicant.

The *Government Pleader* (Munshi *Ram Prasad*), for the Crown.

STRAIGHT, Offg. C. J.—This conviction cannot be sustained. There is a serious conflict of testimony as to the words which were used by the petitioner regarding the complainant Niamat Ali, and it is exceedingly doubtful, upon the face of the whole evidence, whether any such threat of injury, as came within s. 189 of the Penal Code, was held out by the petitioner to the complainant. I do not agree with the Judge's observation, that it is immaterial what the words used actually were; on the contrary, it was most material that those words should be before the Court to enable it to ascertain whether, in fact, a threat of injury to the constable was really made by the petitioner. It does not appear in what mode the complainant was conducting his examination of the several persons suspected of participation in the burglary, and it is possible that he conducted it in such a manner as might properly elicit from the petitioner a remonstrance or observation as to the impropriety of his conduct, accompanied by a threat to complain of him, which under such circumstances could not be the subject of a charge under s. 189. However this may be, the case is such a doubtful one that the conviction is not sustainable. The application for revision must, therefore, be allowed, and quashing the orders of the Magistrate and the Judge, I acquit the petitioner, and direct that he be at once released, and that the fine, if realized, be refunded.

Conviction set aside.

1886
May 28.

Before Mr. Justice Straight, Offg. Chief Justice.

QUEEN-EMPRESS *v.* JUGAL KISHORE.

Act XLV of 1860 (*Penal Code*), *s.* 182—*Prosecution under s.* 182—*Criminal Procedure Code, s.* 195.

A prosecution under s. 182 of the Penal Code may be instituted by a private person, provided that he first obtains the sanction of the public officer to whom the false information was given, or of his official superior. *Queen-Empress* v. *Radha Kishan* (1) overruled.

Where a specific false charge is made, the proper section for proceedings to be adopted under is s. 211 of the Penal Code.

(1) I. L. R., 5 All. 36.