

in the result of the appeal who have not been made parties to the appeal be added as respondents.

For the above reasons we are of opinion that the Court below was wrong in holding that the appeal to it had abated. We accordingly allow the appeal, set aside the decree of the lower appellate Court, and remand the case to that Court under the provisions of section 562 of the Code of Civil Procedure for trial according to law. Costs here and hitherto will follow the event.

Appeal decreed and cause remanded.

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PANDE.

REVISIONAL CRIMINAL.

1902
July 10.

Before Mr. Justice Blair and Mr. Justice Aikman.

EMPEROR v. MAHABIR SINGH AND OTHERS.*

*Act No. XLV of 1861 (Indian Penal Code), section 423—"Dishonestly"—
"Fraudulently"—False statement of price in a sale deed with the view of
defeating claims of pre-emptors.*

Held that the making of a false statement in a sale deed of immovable property as to the consideration for the sale, such statement being made for the purpose of preventing any person who might have a right of pre-emption in respect of property sold from coming forward to assert his right of pre-emption, is an offence which falls within the definition contained in section 423 of the Indian Penal Code

THE facts of this case, so far as they are material for the purposes of the present report, are as follows:—One Sheobhik brought a charge of cheating against Mahabir. The complainant alleged that by two sale deeds in favour of Mahabir, registered on the 9th of October, 1900, he had sold certain property to Mahabir for the sum of Rs. 1,900, of which price Rs. 1,000 were to pay off prior mortgages on the property. Of the balance Sheobhik admitted the receipt of Rs. 184 in cash, but said that he had not received the balance Rs. 716. Before the Registrar, Sheobhik had admitted payment in full. Mahabir in his defence said that he had paid Rs. 286 in cash as well as the Rs. 184, and he proved a mortgage for Rs. 50 which he had redeemed. The remaining Rs. 400, he said, was owed him by Sheobhik for grain and cash lent during the last ten years. This Sheobhik

* Criminal Revision No. 337 of 1902.

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entirely denied. Mahabir was thereupon called on to produce his account-books. He did so; but on inspection they were found to be obvious fabrications, and Mahabir was in consequence charged with cheating. Upon this Mahabir made a statement to the Court, in which, while admitting the fabrication of the account, he said that the real consideration money was Rs. 1,500, but that in order to forestall the co-parceners' right of pre-emption, he had induced Sheobhik to consent to the consideration being entered as Rs. 1,900. On this admission the prosecution of Mahabir under section 423 of the Indian Penal Code was ordered. His prosecution was also ordered under other sections of the Code in respect of the fabricated accounts. Against this order Mahabir applied in revision to the High Court, and, *inter alia*, challenged the applicability of section 423 of the Code to the admitted facts of the case.

Mr. G. P. Boys for the petitioners.

The Assistant Government Advocate (Mr. W. K. Porter), for the Crown.

BLAIR, J.—This is an application for revision of an order of a Magistrate directing the prosecution of Mahabir Singh, Beni Prasad, and Binda Prasad. The charges against Mahabir, for which prosecution is ordered, are made up of offences under sections 423, 192, and 196 of the Indian Penal Code. He is also ordered to be tried for offences under sections 465 and 471 of the Indian Penal Code. The petition is to the following effect: that no prosecution can lie in regard to the entry of an excessive price in a sale deed when that entry is made solely with the object of resisting pre-emption. Mr. Boys, who appears for the applicant, has cited to us a passage from Baillie's *Moohummudan Law*, the effect of which is that devices to defeat pre-emption are permissible under that law, one of those devices being the entry of excessive price in the contract of sale. He informs us that he has failed to find in the books any case upon this point. Mr. Porter, who appears for the Crown, has also been unable to trace any authority upon this point*. We consider ourselves bound by the clear terms of the section of the Indian Penal Code, which seems to be most aptly framed to meet this case. The material words of

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section 423 of the Indian Penal Code are:—"Whoever fraudulently signs, executes, or becomes a party to any deed or instrument which purports to transfer, or subject to any charge, any property or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished." It seems to us that those terms are too precise and accurate to allow our putting on the law an elastic interpretation said to have been accepted by Muhammadan authorities. There is no provision of law by which parties of any sect have a right to be exempted from the operation of the criminal law applicable to all the subjects of the King.

The second ground of the petition questions the propriety of the order which has been made in respect of the forgery and production of forged books. It is sufficient to say that under the rulings of this Court the fabrication or use of such a document by an accused person for the sole purpose of defending himself does not fall within the range of the sections dealing with forgery.

The petition does not attempt to deal with the sanction for prosecution under sections 192 and 196 of the Indian Penal Code. Section 192 only defines an offence, but does not declare it to be punishable. Under that section, therefore, no prosecution can be had.

As far as Beni Prasad is concerned, he is only a servant, there being nothing before the Magistrate except the statement of somebody made behind Beni Prasad's back that he had made certain entries in those books. The order to prosecute Beni Prasad must therefore be quashed.

Binda Prasad's case seems to be slightly different. He made the entry in the books upon the instructions of his master. We think the order to prosecute him also should be quashed.

We have to observe in the case of Mahabir that the offence committed by him, if it falls under section 423 of the Indian Penal Code, is one in which the other party to the sale, one Sheobhik, also participated. It was in the prosecution instituted against Mahabir for cheating that the evidence alleged to be false

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and the document alleged to be forged were produced. At the hearing it is to be noticed that Mahabir frankly confessed that he had taken part in making a false entry in the sale deed, so that, as far as any pre-emptor is concerned, he repaired, as far as it lay in his power, any injury which might have been done to any possible pre-emptor. That will be a matter for consideration upon the question of sentence for the Court that tries the case. The prosecution under section 423 is no doubt somewhat novel. After many years' experience in this Court, we have never had a prosecution under that section for the entry of false consideration in a sale deed, and yet it is within the experience of this Court that considerations are habitually falsely entered. In respect to the dishonesty of such false entries the popular conscience has never been aroused. This also should be taken into consideration in imposing sentence which, in our opinion, should be rather as a warning than as a punishment. We therefore decline to set aside the order of the Magistrate by which prosecution under section 423 of the Indian Penal Code has been directed. We set aside the order of the Magistrate in so far as it directs the prosecution of Mahabir under section 465, section 465 read with section 107, and section 471 of the Indian Penal Code. We alter the order for a prosecution under section 192, which was evidently a mistake on the Magistrate's part, to a prosecution under section 193 of the Indian Penal Code. The order for a prosecution under section 196 will stand; but it must be understood that this is an alternative to section 193, and that the applicant should not be convicted under both.

The order against Beni Prasad and Binda Prasad is set aside.

As Mahabir, at the hearing of the false charge against him, admitted that he had in order to meet it fabricated false evidence, the same observation applies as to the offence committed under section 423, that is, in the event of conviction in our opinion, a lenient sentence should be passed.

AIKMAN, J.—I am of the same opinion. I only wish to add that if it is true, as we are informed, that the Magistrate has taken no action against Sheobhik, I fail to understand why he has not been proceeded against, for, on the Magistrate's own showing, his guilt is greater than that of Mahabir.