

## REVISIONAL CRIMINAL.

1916  
March, 11.

*Before Sir Henry Richards, Knight, Chief Justice.*

EMPEROR v. HUSAIN KHAN AND ANOTHER \*

*Act No. XVI of 1909 (Indian Registration Act), section 82 and 83—Permission of registration officer a necessary preliminary to a prosecution.*

*Held* that the permission referred to in section 83 of the Indian Registration Act, 1908, is a necessary condition precedent to the prosecution of any person for an offence mentioned in section 82 of the Act. *King-Emperor v. Jiwan* (1) referred to.

THE accused in this case were charged under section 82, Indian Registration Act, on the following facts. A forged will, purporting to be executed by Husain Khan accused and one Musammat Banno Bibi, was presented for registration and registered. Husain Khan appeared in person and Musammat Banno Bibi was alleged to have been personated by Musammat Wazira accused. These facts were brought to the notice of the Sub-registrar, by one Ashraf Khan who pressed for sanction under section 83 of the Registration Act, to prosecute the accused and this sanction was granted. Ashraf filed a complaint, but compromised the matter and the accused were discharged. Subsequent to this, the son of Ashraf filed another complaint against the same accused. The accused pleaded, *inter alia*, that no prosecution for an offence under section 82 of the Registration Act could be started without the permission of the officials mentioned in section 83 of the Registration Act. The trial court held that no sanction was required, but if it was necessary, the sanction given to Ashraf was sufficient to cover the present complaint. It convicted the accused and sentenced them to imprisonment and fine. On appeal by the accused, the Sessions Judge held that the sanction given to Ashraf could not cover the present complaint, but that no sanction was necessary. It confirmed the convictions and sentences. The accused applied to the High Court in revision.

Babu *Piari Lal Banerji*, for the applicant :—

“Section 83 laid down the ways in which it was permissible to start prosecution for an offence, viz. either on the complaint of

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\* Criminal Revision No. 121 of 1916, from an order of Ram Chandra Chaudhri, Officiating Sessions Judge of Allahabad, dated the 10th of January, 1916.

one of the officials named or on the complaint of some one to whom permission had been granted by some one of such officials. The use of the word 'may' did not show that the granting of permission was not obligatory. Section 83 would be rendered absolutely useless if any one could file a complaint without taking the permission of the registration officials. The only case of this Court in which this point had to be considered is reported in Indian Cases Vol. 27, p. 208. In this case TUDBALL, J., was decidedly of opinion that sanction was necessary. The Calcutta case reported in I. L. R., 11 Calc., 566, relied on by the Sessions Judge, gave no reason for holding that sanction was not necessary, whereas the earlier case of that Court reported in I. L. R., 10 Calc., 604, decided that sanction was necessary.

The Assistant Government Advocate (Mr. R. Malcomson), for the Crown :—

Section 83 was not worded in the same way as section 195 of the Criminal Procedure Code. There was no statutory enactment preventing a court from trying a person for an offence under the Registration Act, unless the sanction of some official of the registration department was obtained. The use of the word "may" showed the permission was not obligatory.

Babu *Piari Lal Banerji*, not heard in reply.

RICHARDS, C. J.—The accused have been convicted of an offence under section 82 of the Registration Act. The court below has found that the accused brought a certain document purporting to be a will executed by (amongst other persons) one Musamat Banno Bibi and had the document registered. The court has found that at the time of this registration Banno Bibi was dead. On this finding it is clear that an offence under section 82 of the Registration Act was committed. Section 83 of the Registration Act is as follows :—"A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Branch Inspector-General of Sindh, the Registrar or Sub-registrar in whose territories, district or sub-district, as the case may be, the offence has been committed." The father of the present complainant got permission under section 83 to prosecute, but he compromised the case and dropped the prose-

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ction. This case accordingly must be dealt with on the assumption that no permission under section 83 was obtained. The applicant contends that the absence of this permission vitiates the conviction and that no court could take cognizance of an offence under the Registration Act unless permission under section 83 was first had and obtained. Section 83 seems neither very clear nor grammatical. Bearing in mind, however, that the offence is the creation of the Registration Act, and finds no place in the Penal Code, I think that the accused is entitled to the benefit of any ambiguity in the provisions of the Act. It is certainly not an unreasonable contention to be urged on his behalf that a prosecution for an offence under section 82 should not be commenced without the permission referred to in the section. It is said that the permission only refers to permission by a Registering authority. This seems hardly correct, because the different registering authorities are the very persons who are named by the section as the persons who should grant the permission. The applicant cites the case of *King-Emperor v. Jiwan* (1). It seems quite clear that TUDBALL, J., was of opinion that permission was necessary before a prosecution for an offence under section 82 could be commenced. I allow the application, set aside the conviction and sentence and direct that accused be set at liberty. The fine, if paid, will be refunded.

(1) (1913) 27 Indian Cases, 208.