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of any decree following upon that transaction, that debt or that contract.

There is nothing further in the case, and their Lordships will humbly advise His Majesty that this appeal should be allowed with costs.

*Appeal allowed.*

Solicitors for the appellant:—*T. L. Wilson* and *Co.*

J. V. W.

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*January*, 19.

## REVISIONAL CRIMINAL.

*Before Justice Sir George Knox.*

EMPEROR v. BHAWANI DAT.

*Act No. XLV of* 1860 (*Indian Penal Code*), *section* 498—*Criminal Procedure Code, sections* 4, 199, 238(3)—*Complaint—Statement made in Court as a witness.*

Where in a proceeding instituted by the police under section 366 of the Indian Penal Code, the husband of the woman appeared as a witness and asked the Magistrate trying the case to drop the proceedings under section 366 as he intended to prosecute the accused under section 498 of the said Code, it was *held* that the statement made by the husband, as a witness, fell within the definition of complaint as defined in section 4, clause (*h*) of the Code of Criminal Procedure and therefore a conviction under section 498, treating the statement made by the husband as a complaint, was legal. *In the matter of Ujjala Bewa* (1) and *Queen-Empress* v. *Kangla* (2) referred to.

THE facts of this case were as follows:—

One Bhawani Dat was charged with an offence under section 366 of the Indian Penal Code. The husband was not a complainant; apparently the police took up the case, but the husband appeared as a witness. While the case was proceeding under section 366 of the Indian Penal Code, he gave his evidence on the 6th of July, 1915. In the *interim* apparently he had asked that the proceedings under section 366 should be dropped, but when examined on the 6th of July he explained that his action in this matter was due to deception practised on him by one Ratti Ram, and he said in most emphatic terms, both in the examination in chief and in cross-examination, that he wished to prosecute the accused.

* Criminal Revision No. 929 of 1915, from an order of W. J. D. Burkitt, Sessions Judge of Kumaun, dated the 5th of October, 1915.

(1) (1878) 1 C. L. R., 523. (2) (1900) I. L. R., 23 All., 82.

The magistrate treated this statement as a "complaint" and convicted the accused under section 498 of the Indian Penal Code. The Sessions Judge rejected his appeal. Thereupon he applied to the High Court in revision.

Mr. *A. H. C. Hamilton*, for the petitioner :—

The case was instituted by the police under section 366, Indian Penal Code. The application of the husband that proceeding should be dropped was rejected. The conviction is under section 498, Indian Penal Code. There has been no formal complaint by the husband, and in the absence of such complaint the lower courts had no jurisdiction, by reason of sections 199 and 238 (3), Criminal Procedure Code, to convict under section 498, Indian Penal Code. Moreover, under section 190, Criminal Procedure Code, cognizance of an offence can only be taken upon receipt of a complaint of facts which constitute such offence. "Complaint" has the same meaning in section 199 of the Criminal Procedure Code as in the definition given in section 4 (1), clause (*h*) of the Criminal Procedure Code; *Tara Prosad Laha* v. *Emperor* (1). The lower courts have wrongly treated the husband's deposition as a complaint, holding it to be "an allegation made orally or in writing to a Magistrate with a view to his taking action under the Code," but it is clear that this definition relates to preliminary proceedings and cannot apply to an allegation made when the trial under section 366, Indian Penal Code, is almost complete. All the High Courts are agreed that the husband's deposition in such circumstances cannot be regarded as a complaint. *Empress of India* v. *Kallu* (2); *Chemon Garo* v. *Emperor* (3); *Emperor* v. *Isap Mahomed* (4); *Bangaru Asari* v. *Emperor* (5). The statement is merely the statement of the complainant as a witness, it may be the narration of an offence under section 498, Indian Penal Code, but it is not a complaint nor a statement in examination under section 200 of the Criminal Procedure Code. Even where there has been a complaint by the husband, the facts related must have special reference to an offence under section 498,

(1) (1903) I. L. R., 30 Calc., 910. (3) (1902) I. L. R., 29 Calc., 415.

(2) (1882) I. L. R., 5 All., 233. (4) (1906) I. L. R., 31 Bom., 218.

(5) (1903) I. L. R., 27 Mad., 61.

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Indian Penal Code, otherwise there would be no difference of procedure between the classes of cases referred to in sections 198 and 199, Criminal Procedure Code, and other cases not included in these sections; *Queen Empress* v. *Deokinandan* (1). As no complaint, apart from the deposition, has ever been made, it is unnecessary to discuss the authorities dealing with cases where the facts alleged by the husband complainant have been described by him as falling under one section of the Penal Code whereas the court has been of opinion that they fell under another.

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

KNOX, J.—The accused, Bhawani Dat, has been convicted of an offence under section 498 of the Indian Penal Code. He presented an appeal from his conviction and sentence, but the appeal was rejected. He comes in revision to this Court. The grounds he puts in revision are (1) that, as the husband has never made any complaint, the courts, by reason of sections 199 and 238 (3) of the Criminal Procedure Code, were debarred from taking cognizance of an offence under section 498, Indian Penal Code; (2) that the husband's petition, dated the 13th May, shows that the court proceedings initiated by the police, were continued in spite of his desire to the contrary; (3) that the circumstance that the husband appeared as a witness for the prosecution in the proceedings under section 366, Indian Penal Code, cannot be regarded as amounting to the institution of a complaint of an offence under section 498, Indian Penal Code, nor can his deposition cure the initial omission to present a formal complaint having special reference to an offence under section 498.

There was a further plea, but it was not argued. On looking to the record I find that the case brought before the courts was a case in which Bhawani Dat was charged with an offence under section 366 of the Indian Penal Code. The husband was not a complainant; apparently the police took up the case; but the husband appeared as a witness. While the case was proceeding under section 366 of the Indian Penal Code, he gave his evidence on the 6th of July,

(1) (1887) I. L. R., 10 All., 139, (43).

1915. In the interim apparently he had asked that the proceedings under section 366 should be dropped, but when examined on the 6th of July, he explained that his action in this matter was due to deception practised on him by one Ratti Ram. Both the courts below have believed him on this point and I agree with them in this view and hold that the application, whatever its value may be, was an application procured by fraud. Now on the 6th of July, Bahadur Singh in most emphatic terms says that he wishes to prosecute the accused. In cross-examination he repeats it and says he wishes that the accused should be punished. It is contended that this statement made in the deposition cannot be regarded as a complaint and that no case under section 498 can be entertained unless and until there is a complaint made by the husband of the woman or in his absence by some person who had care of the woman on his behalf at the time when such offence was committed. On turning to section 4 (*h*) I find that "complaint" includes "the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence." I consider that the words used by Bahadur Singh on the 6th of July fall within the definition of "complaint" contained in the Code.

Authorities have been cited to me which take an opposite view. The case of *In the matter of Ujjala Bewa* (1), is an authority in the contrary direction, and so to my mind is a case of this Court *Queen-Empress* v. *Kangla* (2), in which the accused was charged with an offence under section 457 with intent to commit theft. It was proved to the satisfaction of the Magistrate that the accused did enter the house of complainant in order to commit adultery with the wife of complainant and the conviction was a conviction of having entered the complainant's house in order to commit adultery. The learned Judge of this Court refused to interfere.

The present case is one in which I think I ought not to interfere. I have not the least doubt that the husband did intend that the accused should be prosecuted for an offence under section 493 and that he made an allegation before the

(1) (1878) 1 C. L. R., 523. (2) (1900) I. L. R., 23 All., 82.

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Magistrate that the offence should be inquired into. I am not prepared to exercise my revisional powers and I dismiss the application.

*Application rejected.*

## APPELLATE CIVIL.

1916
*January*, 21.

*Before Mr. Justice Tudball and Mr. Justice Walsh.*

PALLIA (PLAINTIFF) *v.* MATHURA PRASAD (DEFENDANT).*

*Civil Procedure Code* (1908), *order XLVII, rule* 9—*Review of judgement—Second application for review—Practice.*

*Semble*—that there is nothing in the Code of Civil Procedure which prevents a second application for review being made after a previous application for review has been made and rejected. *Gobinda Ram Mondal* v. *Bhola Nath Bhatta* (1) referred to.

IN a suit on a promissory note the defendant pleaded that the plaintiff was a minor at the date of the making of the note and hence incompetent to enter into a contract. The first court upheld this plea and dismissed the suit. On appeal, the District Judge reversed the finding as to the plaintiff's minority and decreed the suit. Afterwards the defendant made an application to the District Judge for review of judgement on the ground of the discovery of new and important evidence, namely a *patra* or entry relating to the date of the plaintiff's birth. That application was disallowed. Some time later, a second application for review of judgement was made by the same party on the ground of the discovery of an application which had been made under the Guardian and Wards Act for the appointment of a guardian of the plaintiff, together with the certificate of guardianship granted thereon. This second application was allowed. Hence the appeal.

Mr. *M. L. Agarwala*, for the appellant :—

A second application for review of the same judgement does not lie under the Civil Procedure Code. The provisions of section 114 and of order XLVII, Civil Procedure Code, contemplate and allow only one review of a judgement. To hold otherwise would put no limit to the plurality of reviews of the same

* First Appeal No. 133 of 1915, from an order of Guru Prasad Dube, Additional Subordinate Judge of Bareilly, dated the 23rd of June, 1915.

(1) (1888) I. L. R., 15 Calc., 432.