

course express no opinion upon the merits which we have not considered. We dismiss the application with costs.

Application dismissed.

1917

BENI PRASAD
v.
HABNAM
DAS.

REVISIONAL CRIMINAL.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

EMPEROR v. UMAR KHAN.*

Criminal Procedure Code, section 364—Statement made by accused person—Refusal of accused to sign record—Act No. XLV of 1850 (Indian Penal Code), section 180.

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February, 23

When the statement of an accused person has been recorded under the provisions of section 364 of the Code of Criminal Procedure and admitted by the accused to be correct, the accused is bound to sign the record of such statement, and his refusal to sign it amounts to an offence within the meaning of section 180 of the Indian Penal Code. *Imperatrix v. Sirsapa* (1) distinguished.

In this case one Umar Khan made a statement as an accused person before a Magistrate under the provisions of section 364 of the Code of Criminal Procedure. The statement having been recorded, Umar Khan refused to sign the record thereof, and in respect of such refusal was tried for and convicted of an offence under section 180 of the Indian Penal Code. The Sessions Judge, being in doubt as to the legality of the conviction, referred the case to the High Court.

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

The opposite party was not represented.

TUDBALL and MUHAMMAD RAFIQ, JJ. :—This is a reference by the Sessions Judge of Saharanpur. One Umar Khan is an accused person who was examined by a Magistrate and his statement recorded in accordance with section 364 of the Code of Criminal Procedure. When called upon by the Magistrate to sign the record of his statement Umar Khan refused to comply. He has been tried and convicted of an offence under section 180 of the Indian Penal Code. The learned Sessions Judge is in doubt as to the correctness of this conviction in view of the decision in *Imperatrix v. Sirsapa* (1), and he has referred

* Criminal Reference No. 90 of 1917.

(1) (1877) L. L. R., 4 B. m., 15.

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the matter to this Court. The decision to which the Sessions Judge has referred is one which was passed when Act X of 1872 was in force. In section 346 of that Act there was a separate paragraph which ran as follows :—“The accused person shall sign, or attest by his mark, such record.” It was held in that case that this was merely directory and not mandatory, and therefore the accused person could not be compelled to sign his statement. It will be seen on examination of section 364 of the present Criminal Procedure Code, that the language of the two sections differs considerably. Clause (2) of the present section runs as follows :—“When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.” It is quite clear to our minds that, at least so far as the Magistrate himself is concerned, clause (2) of section 364 is mandatory and that the Magistrate is bound in law to sign the statement and also to append the certificate mentioned therein. As the clause is worded it is clearly impossible to hold that it is mandatory as to the Magistrate and merely directory as to the accused. The words run, “the record shall be signed by the accused and the Magistrate”. The section is worded very much as the first clause of section 200 of the Code, which orders a Magistrate to examine a complainant upon oath and to reduce to writing the substance of the examination, and which says that the record thereof shall be signed by the complainant and also by the Magistrate. The same order is also laid down under section 154, in the case of information given to a police officer and reduced to writing. It is clear that the alteration of the language of the old Code to the language as it now stands in the present Code, has placed the matter, which was in doubt before, beyond all doubt at the present time. In our opinion the language of section 364 makes it compulsory upon the Magistrate to sign a statement and also upon the accused. The Magistrate is a public servant legally competent to require the accused to sign the statement, and if he refused to do so, the accused

committed an offence under section 180. It will be noted that an accused person is not bound to make any statement whatsoever, but if he does and if he is examined by the Magistrate and replies to the Magistrate's questions, the court is bound to reduce the statement to writing in the form of questions and answers, and the Magistrate is bound to sign it, as also is the accused. In our opinion the conviction is a good one and in accordance with law. We therefore see no cause for interference and return the record.

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Conviction upheld

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

KULSUM FATIMA (OBJECTOR) v. ALI AKBAR AND OTHERS
 (OPPOSITE PARTIES)* :

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 February, 28.

Civil Procedure Code (1908), schedule II, paragraphs 16 and 21: order XXIII, rule 3—Reference to arbitration—Decree on award—Appeal.

A suit was instituted against four defendants. Defendants Nos. 1 to 3 were absent, and as against them the court ordered the proceedings to be *ex parte*. At the first hearing the plaintiff and defendant No. 4 appeared by counsel and an application was put in on behalf of the plaintiff, with the concurrence of the defendant No. 4, asking for an adjournment on the ground that negotiations for a compromise were going on. On the adjourned date the defendant No. 4 made an application intimating to the court that Mr. W. S. Marris (then Collector of Aligarh) had been appointed as arbitrator by agreement between the plaintiff and himself, and that the said arbitrator had consented to act and had begun to make inquiries, and prayed for an adjournment. The application was endorsed by the plaintiff's counsel. The adjournment was granted, and similar applications were from time to time made to the court, and they were granted. Finally the court communicated with Mr. Marris himself, inquiring how soon he hoped to be able to complete the award, and fixed another date for the case. On that date the court was informed that the inquiries had been completed and the award might be expected shortly. The absent defendants had in the mean time stated to Mr. Marris their agreement to accept his award. The award having been submitted to the court, the defendant No. 4 applied that the award might be filed and be made a rule of court. The plaintiff objected on a variety of grounds. The court below overruled all the objections and passed a decree in conformity with the award. On appeal to the High Court it was not contended that the decree was in excess of or not in accordance with the award.

* First Appeal No. 186 of 1915, from a decree of Gopal Das Mukerji, Third Additional Subordinate Judge of Aligarh, dated the 16th of March, 1915.