

The costs of this appeal will be costs in the cause and will abide the result.

1918

NARAIN DAS
v.
HEER SINGH,

Appeal allowed, cause remanded.

REVISIONAL CRIMINAL.

Before Justice Sir Pramada Charan Banerji.

EMPEROR v. SHEO SAMPAT PANDE.*

Criminal Procedure Code, section 4—Act No. XLV of 1860 (Indian Penal Code), sections 193, 210—Sanction to prosecute—Complaint—Letter from trying Magistrate to his official superior asking merely for directions as to procedure.

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The holder of a decree for rent, passed by an Assistant Collector of the second class, took out execution for a larger sum than was in fact due and also gave in his application a wrong date as the date of the decree. The judgment-debtor paid the amount claimed under compulsion, and thereafter applied for sanction to prosecute the decree-holder. Upon receipt of this application the Assistant Collector wrote a letter to the District Magistrate, forwarding it through his immediate superior the Sub-divisional Magistrate, in which he stated all the facts of the case and concluded by soliciting orders in the case. The Sub-divisional Magistrate, instead of forwarding this letter to the District Magistrate, himself passed orders for the prosecution of the decree-holder. He tried the case himself and convicted the decree-holder of offences under sections 193 and 210 of the Indian Penal Code. On appeal the conviction and sentence were upheld by the Sessions Judge.

Held that the letter written by the Assistant Collector to the District Magistrate, in which the former did not ask that any action should be taken by the Magistrate, but merely for directions as to how he should proceed, did not amount to a "complaint" within the meaning of section 4 of the Criminal Procedure Code, and, there being no complaint, the trial was illegal.

THE facts of the case are fully set forth in the judgment. For the purposes of this report they may be briefly stated as follows:—

Sheo Sampat filed a suit in the court of a tahsildar to recover arrears of rent and obtained a decree for a smaller sum than that claimed. In his application for execution of the decree the sum which had been claimed by him was put down as the decretal amount, and the date of the decree was also given wrongly. The full amount was realized from the judgment-debtor and paid to the decree-holder, Sheo Sampat. Then the judgment-debtor applied to the court for sanction to prosecute

*Criminal Revision No. 110 of 1918, from an order of W. R. G. Moir, Sessions Judge of Gorakhpur, dated the 23rd of January, 1918.

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Sheo Sampat for false verification of the application for execution. Sheo Sampat filed an application stating that he had made a *bona fide* mistake. The tahsildar did not grant sanction, nor did he take action under section 476 of the Code of Criminal Procedure, but he addressed a letter to the District Magistrate, through the Sub-divisional Officer, setting forth the facts and concluding as follows:—"The above facts are borne out by the record herewith submitted. I beg to solicit orders in the case." The Sub-divisional Officer, without forwarding the letter to the District Magistrate, himself took action and issued process to Sheo Sampat to answer charges under sections 193 and 210 of the Indian Penal Code. He tried the case himself and convicted and sentenced Sheo Sampat to two years' rigorous imprisonment and a fine. On appeal, the Sessions Judge upheld the conviction and sentence. Sheo Sampat applied in revision to the High Court.

Babu Piari Lal Banerji (with him Pandit Narbadeshwar Prasad Upadhyaya), for the applicant:—

The offences with which the accused was charged are among those mentioned in section 195 of the Code of Criminal Procedure, consequently, no court could take cognizance of them except with the sanction, or on the complaint, of the court concerned. The Tahsildar did not grant sanction; his letter cannot, by any stretch of the imagination, be deemed as granting sanction. The letter is not an order under section 476 of the Code of Criminal Procedure, nor is it a complaint, as defined by section 4 of the Code of Criminal Procedure, as it is not an allegation made to a Magistrate with a view to his taking action under the Code. The Tahsildar merely wrote to his official superior and consulted him in the matter. He asked for directions as to how he was to proceed. He did not ask the District Magistrate to take steps under the Code against Sheo Sampat. I am supported by the case of *Ahmed Husain v. Emperor* (1). The case of *Emperor v. Sundar Sarup* (2) is distinguishable. There the Assistant Collector submitted the record to the Collector and Magistrate of the district expressly "for starting a case under section 193 of the Indian Penal Code." On the merits of the present case it is clear that

(1) (1913) 17 G. W. N., 980. (2) (1904) 1. L. R., 23 All., 514.

there was only a negligent mistake, and that no offence under section 193 of the Indian Penal Code was committed. The case of *Emperor v. Muhammad Ishaq* (1) is in my favour.

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

The letter of the Tahsildar was intended to be a complaint, and was treated by the Sub-divisional Officer as such. There is no prescribed form for a "complaint," nor is an express prayer to take action essential. The irregularity, if any, would be cured by section 537 of the Code of Criminal Procedure. It has not been shown that a failure of justice has been occasioned by such irregularity. On the merits, both the courts below have found as a fact that there was no *bond fide* mistake, but a deliberate intention to try and realize more from the judgment-debtor than was legally due.

BANERJI, J.:—The applicant, Sheo Sampat, who is an old man of seventy, has been convicted under section 193 and section 210 of the Indian Penal Code, under the following circumstances :— Sheo Sampat brought a suit in the Revenue Court against one Barbu for arrears of rent. He claimed Rs. 16-11-0 as principal and interest. An *ex parte* decree was passed in his favour on the 29th of September, 1916 for Rs. 9-4-0 and Rs. 2-5-0 costs, total Rs. 11-9-0. The judgment-debtor, Barbu, made an application to have the *ex parte* decree set aside. This application was granted. The case was re-heard and on the 24th of May, 1917 a decree was made for Rs. 8-3-0, which included costs. On the 19th of May, 1917, Sheo Sampat filed an application for execution of the decree. In that application the date of the decree was erroneously mentioned as the 20th of June, 1917, and the amount claimed was put down as Rs. 16-11-0. He took out attachment of some property of the judgment-debtor. Meanwhile the judgment-debtor deposited the full amount of the decree. In pursuance of the order of attachment of the property of the judgment-debtor some bullocks were attached by the Amin. The judgment-debtor paid the Amin Rs. 17-5-6 which was the amount mentioned in the warrant of attachment, and this amount was received by Sheo Sampat, who granted to the judgment-debtor

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a receipt in full for the aforesaid sum of Rs. 17-5-6. Subsequently he filed an application in the court which was executing the decree, stating that he had made a mistake and that the amount due to him was only Rs. 8-3-0 and no more. Three days before the date of that application the judgment-debtor had applied to the court to sanction the prosecution of Sheo Sampat. No sanction was granted. The Assistant Collector of the second class, who was the tahsildar in whose court the execution proceedings were held, did not take action under section 476 of the Code of Criminal Procedure, but on the 6th of October, 1917 he addressed to the Magistrate of the district a letter in which he stated all the facts and concluded by soliciting orders in the case. This letter was intended to be submitted to the District Magistrate through the Sub-divisional Officer, Mr. Gurney. Mr. Gurney, instead of sending the application to the District Magistrate, himself ordered the prosecution of Sheo Sampat and issued process against him. He himself tried the case and convicted Sheo Sampat and sentenced him to two years' rigorous imprisonment and a fine. This conviction was upheld by the lower appellate court.

The first contention in revision is that the trial was without sanction and was therefore illegal. The offences of which the applicant Sheo Sampat has been convicted are offences referred to in section 195 of the Code of Criminal Procedure. Therefore it was absolutely necessary either that sanction for the prosecution was granted or that a complaint was made by the officer before whom the offence was committed, or some officer to whom he was subordinate. As I have already stated, no sanction was granted and as no proceedings were taken under section 476, it cannot be said that a complaint was made under that section. There remains, therefore, the question whether the letter of the 6th of October, 1917, addressed to the Magistrate of the district, amounted to a complaint within the meaning of that expression as defined in the Code of Criminal Procedure. I find it very difficult to hold that it was a complaint. All that the tahsildar did was to state the facts of the case. He did not ask that any action should be taken by the Magistrate, nor did he intend that the Magistrate should proceed

according to law against Sheo Sampat. The only thing stated in the letter after stating the facts was "I beg to solicit orders." From this it may be inferred that he asked the Magistrate of the district, who also happened to be the Collector to whom the tahsildar was subordinate, to instruct him as to what action he should take in the matter. It would be stretching the meaning of the expression "complaint" to hold that the tahsildar by writing this letter made a complaint and intended the letter to be treated as a complaint against Sheo Sampat with a view to the Magistrate taking action. If that had been the intention he would not have solicited orders which apparently meant orders to him to take some action in the matter. Under these circumstances I am unable to agree with the learned Sessions Judge that there was a complaint by the tahsildar in this case, and that consequently the Magistrate who tried the case could take cognizance of it. In my opinion, as there was no complaint, the trial was illegal and the conviction must be set aside.

I have also considered the merits of the case. I am unable to hold that the accused Sheo Sampat intentionally made a false statement in his application for execution. The statement contained in that application was no doubt false, but I am not satisfied that he knew that the statement was false, or believed that it was untrue, and that he made the untrue statement intentionally. In this view the conviction of Sheo Sampat cannot be maintained.

I allow the application, set aside the conviction and sentence and direct that the fine, if paid, be refunded. The applicant need not surrender to his bail. The bail bond is discharged.

Order set aside.

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