REVISIONAL CRIMINAL.

Before Mr. Justice Dalal.

EMPEROR *v.* MATHURA RAI AND ANOTHER.*

1928
January, 24.

Act No. XLV of 1860 (*Indian Penal Code*), *section* 447—*Criminal trespass—Essential ingredients of offence.*

It is essential to the validity of a conviction of the offence of criminal trespass that the court should find the offence to have been committed with one or other of the intentions named in section 447 of the Indian Penal Code, viz., either to commit an offence or to intimidate, insult or annoy the party in possession. *Emperor* v. *Jangi Singh* (1), followed. *Ghasi* v. *Emperor* (2), referred to.

THIS was an application in revision against an order of the Sessions Judge of Ghazipur. The facts of the case sufficiently appear from the order of the Court.

Pandit *Ambika Prasad Pande*, for the applicants.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

DALAL, J. :—Both the subordinate courts have gone out of the way to make out a criminal charge against the two applicants, Mathura Rai and Sukhdeo Rai. These men are zamindars of a particular field which had been mortgaged to one Raghunath Prasad. During the period of the mortgage, the complainant Ram Prasad was in cultivating possession of the land. When the mortgage was redeemed, the applicants desired to obtain through the revenue court cultivating possession of the land, but their application was rejected as they had been out of possession for over 12 years. Ram Prasad continued to be the tenant of the land. He complained to the criminal court under sections 447 and 426 on the following alleged facts :—That on the

*Criminal Revision No. 748 of 1927, from an order of K. G. Banerji, Sessions Judge of Ghazipur, dated the 22nd of October, 1927.

(1) (1903) I.L.R., 26 All., 194. (2) (1917) 15 A.L.J., 793.

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21st of July, 1927, soon after sunrise, he happened to go to another field of his when he noticed the applicants uprooting *parwar* crop growing in this particular field 125/2. He went up and protested, whereupon the applicants threatened to beat him. His allegations did make out an offence under section 441 because it was alleged that the applicants entered the field of the complainant with intent to commit the offence of mischief. The magistrate of the trial court disbelieved the evidence of the offence and came to the conclusion that the field was fallow on the date of the alleged occurrence and no crop, *parwar* or other, grew there on that date. Under the circumstances one would have expected the applicants to be acquitted when their intention of committing an offence was disproved. The magistrate, however, went on to make out a case which was never submitted to him for consideration. He was of opinion that the applicants had forcibly ejected the complainant and thereby committed an offence under section 447. He does not explain how forcible dispossession, which was a civil matter and gave to the tenant a cause to proceed under section 79 of the Tenancy Act then prevailing, would constitute a criminal offence. The magistrate of the appellate court made this clear by presuming that the intention of the applicants was to annoy the complainant. There was no question of insult and the allegation of intimidation had been disbelieved by the trial court. The magistrate of the appellate court, however, could not have read the statement of the complainant. The complainant was put in the witness-box and he never alleged, nor was he ever questioned, that the act of the applicants annoyed him. He could not have been annoyed because he himself sought a false cause for the charge of criminal trespass which he would not have done if he had a true one to rely on of an annoyance to himself. The levity with

which the criminal courts apply penal statutes is much to be deprecated. I often observe that a magistrate, when he feels that he has stretched a point in spreading the net of a criminal charge, thinks that he salves his conscience by imposing only a fine which he thinks is a matter of little consequence. The learned Chief Justice, Sir JOHN STANLEY, emphasized the necessity of proof of an intention to commit an offence or to intimidate, insult or annoy before a conviction was recorded under section 447: *Emperor* v. *Jangi Singh* (1). The learned Assistant Government Advocate quoted by way of a reply the case of *Ghasi* v. *Emperor* (2). There is, however, no discussion in that case of the ingredients which ought to form the basis of a charge under that section. The learned CHIEF JUSTICE observed at p. 195:

"It has not been proved in this case, and indeed it has not been asserted, that the applicant took possession with intent to commit an offence, or with intent to intimidate, or insult or annoy the party in possession. The applicant is a zamindar of the property in question, and he alleges that he took possession on the abandonment of the land by his tenant. His intention possibly was to obtain possession contrary to law, but this of itself would not constitute criminal trespass".

In the present case the intention to commit an offence was disbelieved, as also the intention to intimidate, and the complainant never asserted that he was either insulted or annoyed. Obviously, the complainant desired to avoid expenditure on court fee and the bar of limitation and instead of seeking his proper remedy in the revenue court came to the criminal court on false allegations. It is a pity that he succeeded in this device. I set aside the conviction and sentence of the applicants and direct that any fine recovered from them shall be refunded.

Conviction quashed.

(1) (1903) I.L.R., 26 All., 194. (2) (1917) 15 A.L.J., 793.