

Before Mr. Justice Dalal.

EMPEROR *v.* JANKI RAI.*

1927
January,
17.

*Act No. XLV of 1860 (Indian Penal Code), section 199—
Written statement—Civil Procedure Code, orders VI,
VIII, X and XIX.*

A defendant cannot be convicted under section 199 of the Indian Penal Code simply on account of a statement made by him in a written statement filed under order VIII, rule 1, of the Code of Civil Procedure. *Chandi Prasad v. Abdur Rahman* (1), referred to.

THIS was an application for revision of an order of the Sessions Judge of Azamgarh. The facts of the case are fully set forth in the judgement of the High Court.

Dr. M. L. Agarwala, for the applicant.

The Assistant Government Advocate (*Dr. M. Walli-ullah*), for the Crown.

DALAL, J. :—This is an application in revision from the judgement of a learned Sessions Judge upholding the applicant's conviction under section 199 of the Indian Penal Code. The facts are admitted, as they must be, here by the applicant's learned counsel, *Dr. Agarwala*. He raised a point of law that on those facts no offence was committed under section 199.

In a suit for sale against a Hindu father and his sons the father filed a written statement to the effect that the money was borrowed for the benefit of the plaintiff's father, who was a brother of the applicant. The written statement was verified, as required by the provisions of order VI, rule 15, but the court had not ordered proof of the statements made therein by affidavit, as it had power to do under order XIX,

* Criminal Revision No. 702 of 1926, from an order of Syed Abdul Hasan, Sessions Judge of Azamgarh, dated the 20th of October, 1926.

(1) (1894) I.L.R., 22 Calc., 131.

rule 1. Under the circumstances, the question before this Court is whether the written statement falls within the terms of section 199 which makes punishable any declaration which any court of justice is bound or authorized by law to receive as evidence of any fact. A written statement is a pleading under order VI, which describes how pleadings are to be prepared. Order VIII, rule 1, lays down that a defendant may present a written statement of his defence. After the written statement is filed, the court ascertains from each party or his pleader admission or denial of allegations of fact made in the plaint or written statement. This is provided for in order X, rule 1. These admissions or denials are the basis of issues to be framed by the court. The Civil Procedure Code does not provide that statements in written statements are to be received as evidence. The pleadings lay down the points of difference between the parties which have to be decided by the court on evidence to be recorded subsequently. It is for this reason that the importance of recording the evidence of parties is constantly pointed out to civil courts. In the present case, as in the majority of cases, the court did not proceed to record the statement of the applicant. If the applicant had repeated on oath the statements of the written statement which had been found to be false, he would have rendered himself liable to prosecution under section 193. Under section 21 of the Indian Evidence Act, a court is bound to receive in evidence admissions of a party, but no such rule applies to denials. In my opinion an allegation in a written statement is not evidence of any fact, which a court is bound or authorized by law to receive. Dr. *Agarwala* referred the Court to a ruling of the Calcutta High Court in *Chandi Pershad v. Abdur Rahman* (1). The accused person made a declaration

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to a Municipality as prescribed by statute in order to obtain a licence for horses and conveyances. In that case the learned Judges held that a prosecution under section 199 would not be tenable on the ground that the statement made by the accused in that case was no evidence at all against anyone but himself and could only be evidence against himself as proving an admission by him and no more.

I set aside the conviction and sentence, and order the applicant to be released at once if he is in jail and direct the fine, if recovered, to be refunded. If he has given a bond, it shall be cancelled.

Conviction set aside.

Before Mr. Justice Dalal.

EMPEROR v. TORPEY.*

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Act No. XLV of 1860 (Indian Penal Code), section 341—Criminal Procedure Code, section 345(1)—(Composition of offence.

An offence under section 341, Indian Penal Code, may be compounded without the permission of the court under section 345 (1) of the Code of Criminal Procedure. It is, therefore, unnecessary that a composition should be arrived at after a complaint has been filed in court. *Kumaraswami Chetty v. Kuppaswami Chetty* (1), referred to.

THIS was an application in revision against the order of a magistrate at Allahabad. The facts of the case sufficiently appear from the judgement of the High Court.

Babu Saila Nath Mukerji, for the applicant.

Babu Aditya Prasad Bagchi, for the opposite party.

The Assistant Government Advocate (*Dr. M. Wali-ullah*), for the Crown.

* Criminal Revision No. 720 of 1926, from an order of Raj Narain, empowered as District Magistrate of Allahabad, dated the 25th of October, 1926.

(1) (1918) I.L.R., 41 Mad., 685.