

1933

EMPEROR
v.
MAHMUD
ALI KHAN

several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the court which tries him could award for any one of such offences." The separate sentences under section 60(b) and (f) combined of the Excise Act must therefore go. With regard to the conviction under section 60(b) it will stand. The sentences under section 60(a) and (f) will be set aside. With regard to the sentence under section 60(b) it appears to me that for a first offence one year's rigorous imprisonment is too much. The illicit manufacture of liquor is primarily an offence against the revenue. It is not like being in possession of or selling cocaine. In the case of a first conviction I consider that a sentence of six months' rigorous imprisonment and a fine of Rs.500 is sufficient punishment under the circumstances. I therefore set aside the sentence of one year's rigorous imprisonment and substitute therefor a sentence of six months' rigorous imprisonment. The fine of Rs.500 will stand. In default of payment of the fine Mahmud Ali Khan will undergo further rigorous imprisonment for three months. For the assault the sentence of four months' rigorous imprisonment is set aside and a sentence of two months substituted; the sentence to run concurrently with the sentence under section 60(b) of the Excise Act. The application in revision is otherwise rejected.

Before Mr. Justice Young

EMPEROR v. SUDESHARA*

1933

March, 9

Criminal prosecution—Dispute of a civil nature—Using the criminal courts for enforcing a civil claim—Indian Penal Code, section 420—Cheating—Jurisdiction—Civil and criminal courts.

The complainant had pawned certain ornaments with the accused, Mst. Sudeshara; he alleged that he repaid the money

*Criminal Revision No. 12 of 1933, from an order of W. Y. Madeley, Sessions Judge of Benares, dated the 9th of November, 1932.

1933

EMPEROR
OF
SUDESHARA

but the accused refused to return the ornaments. A charge under section 420 of the Indian Penal Code was brought. The defence was that the transaction took place through one Mst. Katoni, and that Mst. Katoni subsequently borrowed another Rs.80, and therefore the pawnee would not return the articles until the subsequent loan was repaid. At the trial Mst. Katoni's evidence supported the accused. The accused was, however, convicted and sentenced. *Held*, in revision, acquitting the accused, that the dispute in this case clearly ought to have been settled in the civil court. Persons having claims, often of a doubtful nature, frequently took criminal proceedings in the hope that the defendant would pay up the amount claimed rather than face a criminal charge; but to use the criminal courts for enforcing a civil claim was highly improper, and might almost amount to blackmail.

Mr. *M. L. Chaturvedi*, for the applicant.

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

YOUNG, J. :—This is an application in revision from the order of the Sessions Judge of Benares, by which order he confirmed the conviction and sentence passed upon the applicant under section 420 of the Indian Penal Code. The complainant pawned certain ornaments with the accused, Mst. Sudeshara. He alleged that he repaid her the money, but that she refused to return the goods. The defence was that the transaction took place through one Mst. Katoni, and that Mst. Katoni subsequently borrowed another Rs.80, and naturally the pawnbroker would not return the articles until the subsequent loan was repaid. There was a dispute in this case, which I think clearly ought to have been settled in the civil court. I do not intend to go into the merits of the matter, but it is worthy of note that Mst. Katoni did give evidence in the criminal case in favour of the accused. Too often do persons with claims—often doubtful—take criminal proceedings in the hope that the defendant will pay the amount claimed rather than face a criminal charge. To use the criminal courts for enforcing a civil claim is highly improper;

1933

EMPEROR
v.
SUDESHARA

it may almost amount to blackmail. The learned Judge in the court below says: "It is true that the case might very naturally have been brought in a civil court, and the complainant possibly chose the criminal courts simply because they are cheaper." This is no ground for making a criminal charge against a person against whom there is a civil claim. I accept the application in revision, set aside the conviction and sentence and order the fine, if paid, to be refunded. The complainant will be left to his remedy in the civil court.

APPELLATE CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice,
and Mr. Justice Thom*

1933
March, 9

EDUCATIONAL BOOK DEPOT AND ANOTHER (DEFENDANTS) v. RABINDRA NATH TAGORE (PLAINTIFF)*

Copyright Act (III of 1914), section 2(1), proviso (iv)—Incorporation in school text-book of passages from several copyright works by the same author—Whether each poem in a book of poems by the same author is a separate "work" within the meaning of the proviso—Estoppel—Author acquiescing in infringement by some others—Civil Procedure Code, order VI, rule 15—Verification by unauthorised person.

A suit regarding infringement of copyright was brought against the printer and publisher of a book named "Intermediate poems for detailed study, 1929". This book contained 14 poems, which had been recommended by the Board of Intermediate Education for study in schools for the Intermediate examination, together with paraphrases and notes. Four out of these fourteen were poems by Dr. Tagore, one being taken from his book "Gitanjali," two from his book "Gardener", and one from his book "Crescent Moon". The defendants claimed protection under section 2(1), proviso (iv), of the Copyright Act.

Held, that the defendants could not bring themselves within section 2(1), proviso (iv), of the Copyright Act, under which not more than two passages from works by the same author are permitted to be included in a compilation published for

*First Appeal No. 491 of 1929, from a decree of B. S. Kisch, District Judge of Allahabad, dated the 1st of June, 1929.