

1882

WALI
MUHAMMAD
v.
TURAB ALI.

STRAIGHT, J.—Looking at all the circumstances of the case, we think that the order of the Judge is an equitable one, in so far as he holds that the decree should be executed first against the mortgaged property, which is in the hands of the decree-holder's brother. We presume he means by this that if such mortgaged property should prove insufficient to satisfy the mortgagee's debt, he will still have the opportunity of proceeding against the person of the judgment-debtor. Holding this view and being of opinion that we are not debarred from applying equitable principles to the questions that arise in proceedings relating to execution of decree, we think the appeal must be dismissed with costs.

Appeal dismissed.

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June 21.

CRIMINAL JURISDICTION.

Before Mr. Justice Tyrrell.

EMPRESS OF INDIA v. MADHO.

Act XLV of 1860 (Penal Code), s. 182—Giving false "information" to a public servant.

M falsely informed the Collector of a District that certain zamindars had usurped possession of certain land belonging to Government, with the intent "to give trouble to such zamindars, and waste the time of the public authorities." *Held* that, inasmuch as such information was no more than an expression of a private person's belief that the Collector might, if he chose, sustain a civil suit with success against such zamindars, and as, had the Collector agreed with the informant, the result would not have been that he would have used his lawful power as a Collector or as a Magistrate to the injury or annoyance of such zamindars, or that he would have done anything he ought not to have done, *M* had not committed an offence under s. 182 of the Indian Penal Code.

THIS was a reference to the High Court by Mr. G. E. Ward, Magistrate of the Jaunpur District. It appeared that one Madho had preferred a petition to Mr. Ward as Collector, in which he stated that the zamindars of a certain village had taken possession of a market-place belonging to Government, and had caused themselves to be recorded as the proprietors thereof. Mr. Ward instituted an inquiry into the matter, and found that it had been decided some years previously that the property belonged

to the zamindars, and their names had always been recorded as proprietors thereof. Upon this Mr. Ward, observing that the statements of Madho were wholly groundless, and that he could not have been ignorant of the former proceedings in regard to the property, and that he had nevertheless given much trouble to the zamindars and wasted the time of the authorities, ordered that Madho should be charged with an offence under s. 182 of the Indian Penal Code, and the case made over to Mr. D. R. Addis, Joint Magistrate. Mr. Addis was of opinion that there was not evidence sufficient to justify a charge against Madho under s. 182, and declined to issue a summons against him. Mr. Ward, as Magistrate, being of opinion that Madho should at least have been summoned, referred the case to the High Court for orders.

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 EMPRESS OF
 INDIA
 " .
 MADHO.

TYRRELL, J.—The Collector was in error in thinking that the penalties of s. 182 of the Indian Penal Code could be applied to the case of a person, giving to the Collector of a District incorrect information that in the informant's opinion the said Collector had a claim on behalf of the State to a market, of which the local zamindars had according to the informant usurped possession. Such "information" was no more than an expression of a private person's belief or opinion that the Collector might if he chose sustain a civil action with success against certain persons. This is not the "information" contemplated by s. 182 and the connected sections of Chapter X. of the Indian Penal Code; nor is the intention of "giving trouble to the zamindars and wasting the time of the public authorities," attributed to the informant by the Collector, the criminal intention contemplated by s. 182. Had the Collector agreed with the informant the result would not have been that he would have used his lawful power as a Collector or as a Magistrate to the injury or annoyance of the zamindars or that he would have done anything he ought not to do. The Collector would have only procured the amendment of his records, and called on the zamindars to renounce baseless pretensions: or he might have laid a civil action against them as the local representative of the Government of the country. Mr. Addis was right in refusing to entertain against the informant of Mr. Ward a criminal complaint under s. 182, Act X of 1872.