

467/114 of the Indian Penal Code must, therefore, be set aside.

The result is that the appeal is allowed to the extent indicated above. I set aside the conviction and sentence under section 467/114 of the Indian Penal Code and uphold the appellant's conviction and sentence under section 471 of the Indian Penal Code. He shall undergo two years' rigorous imprisonment as ordered by the learned Assistant Sessions Judge.

Appeal allowed.

REVISIONAL CRIMINAL.

Before Mr. Justice Muhammad Raza.

INDARJIT SINGH (*in jail*) (APPLICANT) *v.* KING-EMPEROR (COMPLAINANT-OPPOSITE-PARTY).*

1926
May, 26.

Criminal Procedure Code, sections 195 and 476—Indian Penal Code, section 409—Supurdar refusing to deliver up property—Civil court, jurisdiction of, to commit him under section 409 of the Indian Penal Code.

A *supurdar* refused to deliver up property to the civil court for sale when called upon to do so and the Munsif thereupon took proceedings against him under section 476 of the Criminal Procedure Code and committed the accused under section 409 of the Indian Penal Code, who was convicted under that section.

Held, that the offence under section 409 of the Indian Penal Code is not one of the offences referred to in section 195 or 476 of the Criminal Procedure Code and the Munsif was wrong in taking proceedings against the accused under section 476 of the Criminal Procedure Code in respect of the offence under consideration, and he had no jurisdiction to do so.

Mr. M. M. Ansari, for the applicant.

* Criminal Revision No. 52 of 1926, against the order of W. Y. Madeley, Sessions Judge of Rae Bareilly, dated the 15th of May, 1926.

1926

INDARJIT
SINGH
v.
KING-
EMPEROR.

The Government Advocate (Mr. G. H. Thomas),
for the Crown.

RAZA, J. :—This is an application in revision against an order of the learned Sessions Judge of Rae Bareilly, dated the 15th of May, 1926, upholding an order of a first class Honorary Magistrate of Partabgarh, dated the 24th of March, 1926, convicting the applicant under section 409 of the Indian Penal Code and sentencing him to one month's rigorous imprisonment and a fine of Rs. 10 (or in default two weeks' further rigorous imprisonment).

The applicant became *supurdar* of his brother's cattle which were attached in execution of a decree passed by the Munsif of Partabgarh. He refused to deliver up the cattle to the process-server of the court for sale when called upon to do so. He was bound by the terms of his *supurdnama* to deliver up the property but he failed to do so. His defence was that he had been entrusted with the same property in another case also and that by the second *supurdnama* he was not bound to give up the property in dispute.

The Munsif took proceedings against the accused under section 476 of the Code of Criminal Procedure and committed the accused to the criminal court for trial under section 409 of the Indian Penal Code. He sent a copy of his order to the District Magistrate and the latter made over the case to the Honorary Magistrate, who convicted the accused under section 409 of the Indian Penal Code. The accused's appeal was dismissed by the learned Sessions Judge.

In my opinion this revision should be allowed. The offence under section 409 of the Indian Penal Code is not one of the offences referred to in section 195 or 476 of the Code of Criminal Procedure. The Munsif was clearly wrong in taking proceedings against the accused under section 476 of the Code of Criminal

Procedure in respect of the offence under consideration. He had no jurisdiction to do so. His order, dated the 17th of August, 1925, is not, and cannot be taken to be a complaint under section 476 of the Code of Criminal Procedure. The District Magistrate did not really take cognizance of the offence under section 190 of the Indian Penal Code. He simply acted on the order of the civil court which was illegal and made over the case to the Honorary Magistrate.

I have also examined the evidence on record. In my opinion there is no reliable evidence on record to establish the charge under section 409 of the Indian Penal Code against the accused. The evidence which has been produced in this case does not establish that the accused has really committed criminal breach of trust in respect of the property in question within the meaning of section 405 of the Indian Penal Code. Under these circumstances I allow this revision, set aside the conviction and sentence and direct that the applicant be acquitted and released. The fine, if paid, will be refunded.

Revision allowed.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan and Mr. Justice Gokaran Nath Misra.

ACHICHE MIRZA AND OTHERS (PLAINTIFFS-APPELLANTS)
v. AHMAD SHAH AND OTHERS (DEFENDANTS-RESPONDENTS).*

1926
August, 19.

Oudh Estates Act (I of 1869), sections 8, 15, 22 and 23—Limitations prescribed by lists prepared under section 8 of Oudh Estates Act, whether rules of succession—Transfer or bequest under section 15, effect of, on the law of succession—Succession to property not devolved

* First Civil Appeal No. 37 of 1924, against the decree, dated the 23rd of February, 1924, of Khurshed Husain, Subordinate Judge of Sitapur, dismissing the plaintiffs' suit.