

in this section cannot apply to the charge as existed in favour of Musammat Saiyed-un-nisa inasmuch as the decree in her favour created a recurring liability against the property. No authority has been cited in support of this argument. The word "incumbrances" is of sufficient amplitude to include also a recurring liability like the one in question. We are therefore of opinion that the defendants are liable to reimburse the plaintiff for the payment made by him in respect of the incumbrance of Musammat Saiyed-un-nisa. The plaintiff has in his appeal confined the amount of this liability to a sum of Rs.970. The provision in the sale-deed under which the vendors made some of their other properties liable on the happening of certain contingencies has no application because the contingency which has arisen is not one of the contingencies mentioned in the deed. The plaintiff is therefore entitled only to a money decree for the amount just mentioned.

The result therefore is that we allow the appeal, set aside the decree of the lower court and grant the plaintiff a money decree for Rs.970 together with future interest on this amount from to-day's date till realization at the rate of 6 per cent. per annum. The plaintiff will also get his proportionate costs in all the courts.

*Appeal allowed.*

## REVISIONAL CRIMINAL

*Before Mr. Justice Ziaul Hasan*

JAGDISH NARAIN (ACCUSED-APPLICANT) *v.* NAWAB SHAMS ARA BEGAM AND ANOTHER (COMPLAINANT-OPPOSITE-PARTY)\*

1934  
October, 4

*Indian Penal Code (Act XLV of 1860), sections 182 and 499—Criminal Procedure Code (Act V of 1898), section 198—Complaint by private person under sections 182 and 499, I. P. C.—Sanction of court not obtained—Court can take cognizance of offence under section 499—Complaint under section 499*

\*Criminal Revision No. 105 of 1934, against the order of Pandit Tika Ram Misra, Sessions Judge of Lucknow, dated the 15th of May, 1934.

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HAR CHARAN  
LAL  
*v.*  
NURUL  
HASAN  
KHAN

*Srivastava,  
A. C. J. and  
Thomas, J.*

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JAGDISH  
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P.  
NAWAB  
SHAMS  
ARA BEGAM

*I. P. C. by agent on behalf of a lady—Permission of court not obtained—Court cannot take cognizance of complaint.*

Where a person files a complaint under sections 182 and 499 of the Indian Penal Code without obtaining the sanction of the court, the court cannot take cognizance of the offence under section 499. It does not matter that the complaint under both the sections is one and the same as the offence under section 499, I. P. C., is quite distinct and separate from that under section 182, I. P. C., *In re: Ravanappa Reddi* (1), distinguished.

Where a complaint under section 499, I. P. C., is made by an agent on behalf of a lady, who according to the customs and manners of the country, ought not to be compelled to appear in public but no leave is taken of the court for the purpose, the court has no jurisdiction to take cognizance of the complaint by reason of section 198 of the Code of Criminal Procedure.

Mr. D. P. Khare, for the applicant.

Mr. Mohammad Hafeez, for the opposite party.

ZIAUL HASAN, J.:—This is an application in revision against the conviction of the applicant, Jagdish Narain, under section 500 of the Indian Penal Code.

The facts of the case have been fully stated by the learned Sessions Judge in his order dated the 15th of May, 1934, on the applicant's application for revision and need not be repeated. Several grounds have been taken in revision in this Court and I think the revision must be accepted at least on one of them, namely, that the leave of the Court was not taken under the proviso to section 198 of the Code of Criminal Procedure by Debi Dayal who filed the complaint against the applicant on behalf of his principal, Nawab Shams Ara Begam. The lady is a *jagirdar* to whom rent was payable by the applicant. A suit for rent was brought against him by the lady's *mukhtar*, Debi Dayal, and it was decreed by mistake of the Court for the full amount claimed though the *mukhtar* had made a statement that he had realized a portion of the claim from the applicant out of Court. This decree was put into execution by Debi Dayal but though credit was given in the application for execution

(1) (1932) I.L.R., 55 Mad., 342.

for Rs.30 paid before the decree was passed, no credit was given for a sum of Rs.10 which was admittedly paid by the applicant after the passing of the decree. The money was paid by the applicant and execution was struck off. After that the applicant made an application under sections 476 and 195 of the Code of Criminal Procedure against the lady and her *mukhtar* praying that they should be prosecuted under sections 420, 208 and 210 of the Indian Penal Code. The parties, however, came to terms and the applicant did not prosecute his application under section 476. Subsequently, however, Debi Dayal filed a complaint under sections 182 and 499 of the Indian Penal Code against the applicant purporting to do so on behalf of his principal, Nawab Shams Ara Begam. As sanction of the Court was necessary for the cognizance of an offence under section 182, and no such sanction having been taken, the Bench Magistrates who tried the applicant, left out of account the complaint as far as it related to section 182 of the Indian Penal Code but tried and convicted the applicant under section 500 of the Indian Penal Code sentencing him to a fine of Rs.50.

It is urged that the learned Bench Magistrates were not competent to take cognizance of the complaint under section 499 of the Indian Penal Code also as the complaint under both the sections was one and the same. I do not, however, agree with this view. The case of *In re Ravanappa Reddi* (1) relied on by the counsel for the applicant is distinguishable inasmuch as in that case the two offences under which the complaint was made were formed by the same facts. Here the alleged offence under section 499 of the Indian Penal Code is quite distinct and separate from that under section 182 of the Indian Penal Code.

The second ground on which this application must succeed is that no leave of the Court was obtained by Debi Dayal for filing the complaint under section 499

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of the Indian Penal Code on behalf of his principal, Nawab Shams Ara Begam. Section 198 of the Code of Criminal Procedure lays down that no Court shall take cognizance of an offence falling under chapter 19 or chapter 21 of the Indian Penal Code or under sections 493 to 496 of the same Code except upon complaint made by some person aggrieved by such offence and the proviso to that section renders it permissible, in the case of a woman, who according to the customs and manners of the country ought not to be compelled to appear in public, that a complaint of any of the offences specified in the section be taken cognizance of by the Court on a complaint made by some other person on behalf of such woman provided leave of the Court be taken for the purpose. Now, section 499 of the Indian Penal Code under which the complaint was made by Debi Dayal against the applicant is included in chapter 21 of the Indian Penal Code and it is admitted that no leave of the Court was obtained by Debi Dayal for filing the complaint. Therefore the Bench Magistrates who took cognizance of the complaint had no jurisdiction by reason of section 198 of the Code of Criminal Procedure to do so, and the provisions of the section being mandatory, the trial and conviction of the applicant must be held to be void.

On behalf of the opposite party it was contended that no objection with regard to jurisdiction was taken by the applicant in the trial court. This is no doubt true, but in view of the mandatory provisions of section 198, this cannot confer jurisdiction on the Magistrates who tried the applicant.

The application is allowed and the conviction and sentence of the applicant set aside. The fine, if paid, will be refunded.

*Application allowed.*