

APPELLATE CRIMINAL.

Before Mullick and Bucknill, J.J.

CHETA MAHTO

v.

KING-EMPEROR.*

1923.

Feb., 8.

Criminal Procedure Code, 1898 (Act V of 1898), sections 476 and 190(1)(c)—Presentation of forged document for registration to Sub-Registrar—appeal to District Registrar who was also District Magistrate—order for prosecution of appellant, legality of—Penal Code, 1860 (Act XLV of 1860), section 471.

Where, in an appeal from an order of a Sub-Registrar refusing compulsory registration of a document, the District Registrar, who was also the District Magistrate, found that the document was a forgery, and ordered the prosecution of the appellant for an offence under section 471, Penal Code, held, (i) that although the District Registrar was not a civil, criminal or revenue court within the meaning of section 476, Criminal Procedure Code, he could, as District Magistrate, take cognizance of the offence under section 190(1)(c), and (ii) that the presentation of the document to the Sub-Registrar was sufficient evidence of user of the document.

The facts of the case material to this report are stated in the judgment of Mullick, J.

Bankim Chandra De, for the appellant.

Sultan Ahmed (Government Advocate), for the Crown.

MULLICK, J.—The appellant, Cheta Mahto, has been sentenced to rigorous imprisonment for four years and a fine of Rs. 250 for having on the 12th August, 1920, dishonestly used as genuine a forged document, by presenting it for registration before the Sub-Registrar of Chapra, knowing the same to be a forged

*Criminal Appeal No. 9 of 1923, from a decision of A. E. Scroope, Esq., r.c.s., Sessions Judge of Saran, dated the 18th December, 1922.

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document. The document purports to be a sale deed executed on the 1st June, 1920, by Elahi Baksh and his brother Hayati Mian in favour of the appellant Cheta in respect of two areas of 17 *kattas* and 18 *kattas* constituting respectively the occupancy holdings of Elahi and Hayati. The consideration money was stated to be Rs. 50 and it was also recited in the deed that about Rs. 20 being due to the landlord, Jotik Lal Sahu, for arrears of rent, and about Rs. 19 being due to a creditor named Pranpat Singh, a sum of Rs. 40 on account of these two debts was left in the hands of the vendee and that the vendor was receiving the balance of Rs. 10 in cash.

The previous history of the case is this. In 1912 Jotik Lal Sahu, the landlord, obtained a decree in the Small Cause Court at Chapra for a sum of Rs. 92 against Elahi and in execution attached Elahi's bullocks. Elahi and his brother Hayati thereupon induced the landlord to remit the principal and to take only the costs of the suit which amounted to Rs. 13; but he took the precaution of getting Elahi and Hayati to sign their names and give their thumb impressions on a blank paper bearing a non-judicial stamp of 8 annas. The motive ascribed to the landlord for taking this precaution was that he was afraid that Elahi or his brother would apply for the restoration of the suit and it is suggested that this blank paper was, as the learned Judge puts it, a sort of Damocles' sword held over the head of judgment-debtor. The stamp-paper appears from the endorsement on the back to have been purchased by Elahi on the 21st January, 1913, and full satisfaction was entered in respect of the Small Cause Court decree on the 22nd January, 1913.

On the 10th February, 1917, the landlord gave Elahi settlement of a plot measuring 18 *kattas* of which the landlord was in *khas* possession. The *patta* was duly registered; and the case for the prosecution is that since that date Elahi has been in continuous possession. It is alleged that shortly afterwards

Liladhar, the *gomastha* of the landlord, who had been an unsuccessful applicant for the lease of the land, began to press Elahi for *salami* and upon Elahi refusing to give him anything he lodged a criminal case against Elahi alleging that Elahi had wrongfully trespassed upon the land and cut away a tree. That case was dismissed and a sum of Rs. 20 was awarded to Elahi as compensation on the 10th November, 1917. Liladhar, however, was not discouraged, and in the following year when the Revisional Survey operations commenced in Khalispore, he claimed possession of the 18 *kattas* plot, but he was again unsuccessful. It is stated that before the Settlement Officer the accused, Cheta Mahto, also filed objections to the entry in the record-of-rights and claimed to be in possession of the land; but what the nature of his claim was and upon what title he based his claim is not disclosed. We merely learn from the evidence of Elahi and Hayati that objections were made by Liladhar and Cheta and were dismissed.

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Nothing further happened till the year 1920. The case for the prosecution is that on or about the 1st June of that year, Liladhar and Cheta conspired together to manufacture a document of title in respect of the 18 *kattas* and in order to do so they induced Jotik, the landlord, to hand over the blank paper which Elahi and Hayati had given him seven years earlier. It is alleged that upon this paper a deed of sale was inscribed reciting that the 18 *kattas* settled with Elahi on the 10th February, 1917, and another plot of 17 *kattas* held by Hayati, under the same landlord, had been transferred to the accused Cheta for a sum of Rs. 50. It is alleged that armed with this sale deed Liladhar, Cheta and thirteen others trespassed upon Elahi's land and attempted to build a road across it. There was consequently a riot in the course of which Elahi was severely wounded and on the 30th October, 1920, the Deputy Magistrate of Chapra sentenced all the accused before him to various terms of imprisonment and fine. In appeal the

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Additional Sessions Judge of Chapra, by a judgment dated the 8th February, 1921, acquitted fourteen of the appellants but maintained the convictions of Cheta, Liladhar, Babu Ram and Deonandan. The result of these criminal proceedings was that Cheta was directed to serve a sentence of six months' rigorous imprisonment and Liladhar a sentence of nine months' rigorous imprisonment.

During the trial of this criminal case Cheta and his co-accused appear to have been foolish enough to file the above-mentioned sale deed of the 1st June, 1920. The Deputy Magistrate, Babu Dhirakshan Singh, declined to give any weight to the document and disbelieved the defence that Cheta was in possession; but Cheta was still persistent and on the 12th August, 1920, he made an application for the compulsory registration of the document before the special Sub-Registrar. Upon issue of notice Elahi and Hayati appeared and denied execution; and the Sub-Registrar, after a protracted inquiry, passed an order on the 5th April, 1921, refusing to register the document.

An appeal was made to the District Registrar under the provisions of the Indian Registration Act, but that appeal was dismissed on the 28th July, 1921, and on the 2nd August, 1921, the District Registrar directed the prosecution of Cheta for an offence under section 471, Penal Code, and referred the case under the provisions of section 476, Criminal Procedure Code, to the District Magistrate of Chapra.

After the usual inquiry the accused was committed to the Court of the Sessions Judge, who agreeing with both assessors, has found the accused guilty of the offence charged.

Now, a preliminary point is taken that the Magistrate, who made the commitment inquiry, had no jurisdiction to take cognizance inasmuch as the District Registrar not being a Civil, Criminal or Revenue Court within the meaning of section 476, had no jurisdiction to proceed under that section. This

contention may be accepted but the District Registrar was also the District Magistrate and it is not denied that the District Magistrate was competent to take cognizance under section 190, clause (1), sub-section (c), of the Criminal Procedure Code and to transfer the case to a Subordinate Magistrate in order that a commitment inquiry might be held. That officer has committed the case to the Session Court in accordance with law and, in my opinion, the commitment is valid. There was, therefore, no defect in the jurisdiction of the Sessions Judge to try the accused.

Then coming to the merits: the first question is, whether the document of the 1st June, 1920, is in fact a forgery. On this point we have the evidence of Elahi and Hayati, which was the only direct evidence it was possible for the prosecution to adduce. It appears that in 1921, that is to say after his conviction in the riot case, a civil suit was instituted by Cheta Singh against Elahi and Hayati for a declaration of title to the lands covered by the *kabala* and for recovery of possession. On the 25th April, 1922, the Munsif dismissed that suit on the ground that the sale deed had not been produced and that the contract upon which the title was founded had not been proved. In the present case the onus lay still more heavily upon the accused to give substantive evidence of the contract, but he has called neither the writer nor any of the witnesses to the deed; and the explanation that his legal advisers in the Session Court did not think it advisable to let in the Crown's right of reply is not by any means adequate. The accused could not have been ignorant of the necessity of calling this evidence, if indeed the document was genuine, for his person and liberty were in jeopardy, and I agree with the Sessions Judge that the accused knew that the document was a forgery and that its execution could not be proved. Therefore having considered the evidence of Elahi and Hayati very carefully I do not think there can be any doubt that it is substantially true. They are corroborated by three other witnesses, Sakhi Chand, Chirkut and Jinnat Ali whom they took to Chapra to negotiate

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with Jotik Lal in the matter of the satisfaction of the Small Cause Court decree. It seems strange at first that Hayati should also have been taken, for he had apparently no interest in the satisfaction of the decree; but the explanation seems to be that the landlord, who knew Hayati to be a very astute person, was afraid that he would induce Elahi to repudiate the compromise and to apply for a rehearing of the Small Cause Court suit and that for that reason he insisted on Hayati's signature on the paper. These three witnesses mentioned above all state that negotiations took place in the court compound at Chapra and I see no reason why they should be disbelieved. Two are Hindus and one is a Muhammadan, and it does not appear that they have any enmity either against the accused or against Jotik. The taking of a blank paper from Elahi and Hayati is, in my opinion, proved.

The next question is, how did it get into the custody of the accused Cheta? Now, the evidence on this point is that the landlord has been siding first with Liladhar and then with both Cheta and Liladhar for the purpose of ousting Elahi. There is clear evidence that during the trial of the riot case he was paying the fees of the defence. It was, therefore, possible for Cheta to get the document from the landlord.

Why, having given the settlement in 1913, the landlord should attempt to eject Elahi shortly afterwards has not been disclosed; Liladhar is his *gomastha* and Cheta is the cousin of Liladhar and it may be that they will be more useful tenants than Elahi. The evidence shows that at the time of the first criminal case in 1917, Cheta was siding with Elahi and that he did not begin to claim the disputed land till about the time of the Revisional Survey. It was suggested in Elahi's cross-examination that Elahi and Hayati did in fact execute the sale deed in favour of Cheta in 1920 in order that he might fight Liladhar and the landlord but that there was a collateral undertaking on Cheta's part to return the holding to Elahi on repayment of the consideration money. It was also suggested that after getting this document Cheta turned round, went

over to Liladhar's side and joined Liladhar in the forcible dispossession which gave rise to the riot case. Upon the evidence I do not think these suggestions have any foundation. If Elahi and Hayati had in fact transferred their lands it is impossible to believe that they would have resisted the possession of Cheta with such tenacity throughout. Moreover, if his object was to protect Elahi, I see no reason why Cheta should have taken a transfer of Hayati's land also. The case put forward by the prosecution accounts far more satisfactorily for the inclusion of Hayati's name in the document and I am satisfied that the document was not executed by Elahi and Hayati on the 1st June as now alleged by the accused. The document was certainly a forgery, and the accused must have known it to be so. His object being to deprive Elahi of his land his user was clearly dishonest. There can be no question that presentation before the Special Sub-Registrar was sufficient evidence of user. The accused has therefore been rightly convicted by the Sessions Judge.

The only question that now remains is that of sentence; but we do not think we can allow any remission. The accused's conduct has been thoroughly heartless and unprincipled. He was first of all upon Elahi's side and was assisting him to resist the landlord and Liladhar; he then betrayed Elahi and joined the landlord and Liladhar; and not content with this he made an attempt to take forcible possession and engaged in a riot in which Elahi was seriously injured; he then brought a civil suit in which he attempted to enforce his thoroughly false and malicious claim; fortunately he overreached himself in filing his appeal to the District Registrar. The appellant is a dangerous type of litigant and it is necessary therefore that an offence involving the use of a forged document by him should not be lightly viewed. The sentence of four years' rigorous imprisonment and the fine of Rs. 250 are maintained.

BUCKNILL, J.—I agree.

Conviction and sentence confirmed.

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