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nine at night talking to a number of other men some of whom are proved to have been persons of bad character in a bagicha close to a public railway station is, in my opinion, no evidence that he was taking precautions to conceal his presence. It is perhaps impossible, it is certainly undesirable, to lay down any general principles as to the conditions which would bring a case within the purview of the clause, for the circumstances which may arise are so multiple and various; but I think it may be said that there must be some definite attempt at concealment by taking precautions with that object in view, whether it be by disguise or otherwise, indicating a desire to hide the fact that the accused is present within the local limits of the Magistrate's jurisdiction. The clause is one which should be used with proper discretion and was never intended to apply to a person merely found talking at night time with bad characters in a place which is open to the public. I am unable to find that in the circumstances proved the petitioner Rambirich was taking any precautions to conceal his presence. The orders of the Magistrate and of the Sessions Judge must be set aside and the petitioner Rambirich who has been unable to find securities and is at present in prison must be released.

FOSTER, J.—I agree.

Order set aside.

REVISIONAL CRIMINAL.

Before Ross and Foster, JJ.

PURENDAR JHA

v.

NUNULAL JHA.*

Substitution of Parties—Application for—verification not necessary—false verification—Penal Code, 1860 (Act XLV of 1860), sections 191 and 193.

* Criminal Revision no. 824 of 1926, from a decision of R. Ghose, Esq., Sessions Judge of Purnea, dated the 22nd April, 1926, affirming a decision of Babu Khetra Mohan Kutar, Munsif of Araria, dated the 23rd of December, 1925.

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Under section 191, Penal Code,

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" whoever being legally bound.....by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false.....is said to give false evidence."

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The offence of giving false evidence is punishable under section 193.

Held, that the law does not require a petition for substitution of parties to be verified, and, therefore, that the person who presents to a court a verified petition for substitution containing a false statement of the death of the defendant, is not punishable under section 193 of the Penal Code.

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

-*K. B. Dutt* (with him *L. K. Jha*), for the petitioner.

FOSTER, J.—This application in revision arises out of a decision of the District Judge of Purnea, refusing to withdraw a complaint lodged by the Munsif of Araria on the 21st of December, 1925.

The said learned Munsif had been moved to take action under section 476 of the Code of Criminal Procedure in respect of a false statement in an application for substitution of one Nunu Lal Jha as the legal representative of Musammat Ratnabati. The petition was presented by the present petitioner in the following circumstances :

The petitioner Purendar Jha brought a suit for arrears of rent (suit no. 1892 of 1924) against a tenant Musammat Ratnabati in the Munsif's Court at Araria. The defendant entered appearance and, in her written statement, denied the relationship of landlord and tenant. This written statement was filed on the 11th of September, 1924. On the 18th of November 1924 the petitioner, as plaintiff in that suit, filed a petition to amend the plaint in the Munsif's Court on the ground that Musammat Ratnabati had died on the 2nd of Kartick, 1332, Mulki, and prayed that one Nunu Lal Jha should be

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substituted as her legal representative. This was done; and, subsequently, Purendar Jha succeeded in obtaining an ex parte decree against Nunu Lal. Subsequently Nunu Lal moved the Court to set aside the ex parte decree. In the course of that proceeding it was brought to light that the petition of Purendar Jha filed on the 18th of November, 1924, contained an incorrect statement. It may now be assumed as a fact beyond question that Musammatt Ratnabati was not dead at the time of the ex parte decree. The petition filed on the 18th of November, 1924, was therefore made the subject matter of an application by Nunu Lal Jha to the Munsif's Court, asking the Court to take action under section 195 (1) (b) of the Code of Criminal Procedure. Subsequently the complaint was drawn up and dealt with in the manner indicated in section 476 of the Code and an appeal was carried to the Court of the District Judge under section 476B. That appeal was, as I have already stated, decided in December 1925; and the present petition in revision to this Court questions the legality of the proceedings.

The case first came before Mr. Justice Macpherson alone and, as the question involved was one which has not been dealt with as yet in this Court, he thought it advisable to remit the case for decision by a Division Bench.

The question can be succinctly stated on the facts. A party to a civil suit put in a petition for substitution of a named person in the place of a defendant falsely alleging the latter to be dead. The petition for substitution was verified or, at any rate, purported to be verified. There was some question raised, but it has not been necessary to enquire whether the verification in fact conformed to the requirements of the law. For the purposes of the case before us we may assume that the verification, quantum valeat, was in order. The question is whether a person presenting a verified petition for substitution, containing a false statement of the death of a defendant, can be considered to fall within the mischief of section 193 of the Indian Penal

Code. The argument is that where no verification is required by law, a volunteered and unnecessary verification is not such a sworn statement as is contemplated in the definition of false evidence in section 191 of the Indian Penal Code.

So far as the requirement of a verification for an application for substitution of a defendant is concerned, I have not been able to find any provision of law which makes it necessary. Certainly, for a plaint a verification is required; but it does not follow that a verification is required for a petition for substitution of parties by amendment of the plaint; nor does one find in the law as to substitution any mention of the requirement of a verification. Neither in Order VI, nor in Order XXII have I been able to find any requirement of a verification in respect of such a petition.

Taking it then that the verification is not required by law, it remains that the act of the petitioner in verifying his application for substitution of Nunu Lal in place of Musammat Ratnabati was unnecessary and purely voluntary. Now looking into sections 191 and 193 of the Indian Penal Code, it will be seen that a person who has to be punished must be legally bound by an oath or by an express provision of law to state the truth or bound by law to make a declaration upon any subject; and section 193 adds to this that the false evidence to be given by this person subject to punishment must be evidence given at any stage of a judicial proceeding or fabricated for the purposes of being used at any stage of a judicial proceeding. The first part of this definition is the most important; the question being whether the petitioner, when he lodged his application for substitution, was legally bound by an oath or express provision of law to state the truth, or bound by law to make a declaration upon any subject. The suggestion is that he was legally bound by an oath because of his verification; and in section 51 the word "Oath" is described as including "a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to

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be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not". So the declaration must be required or authorised by law to be made. Now as I have found before, there is no requirement or even authorization in the law of any such declaration as is embodied in the verification of the application for substitution: nor is there any express provision of law requiring the applicant for substitution to state the truth or to make a declaration upon any subject.

The fact is that the Court has made a mistake in finding the section of the Penal Code which is applicable to the peculiar circumstances of this case. Certainly section 193 cannot be applied to a case of this nature. The authorities are almost entirely on the side of the petitioner. He has quoted with considerable effect the case of *Queen v. Kartick Chandra Holdar* (1), *Harar Mundul* (2), *Juggut Chunder Mozumdar v. Kasi Chunder Mozumdar* (3) and *Emperor v. Ganeshi* (4). There are other cases which appear to be pertinent and also in favour of the petitioner's argument, quoted in notes (5) and (6) at page 1007 of Gour's Penal Law of India, Third Edition.

I therefore am of opinion that sections 191 and 193 do not apply to a false statement in a petition for substitution, even though it be verified by the petitioner, for the reason that the verification is not required, and that the solemn declaration embodied in such an unnecessary verification is not a declaration within the meaning of these sections or of section 51 of the Indian Penal Code. I would therefore set aside the orders of the Courts below and direct withdrawal of the complaint by the District Judge of Purnea.

Ross, J.—I agree.

(1), (1888) 9 W. R. (Cr.) 58.

(3) (1881) I. L. R. 8 Cal. 440.

(2) (1888) 10 W. R. (Cr.) 51.

(4) (1903) 25 All. W. N. 52.