

## REVISIONAL CRIMINAL.

*Before Mr. Justice Chevis, Acting Chief Justice.*

IMAM DIN, (ACCUSED)—*Petitioner,*

*versus*

NIAMAT ULLAH, (COMPLAINANT) —*Respondent.*

1920

JAN. 31

Criminal Revision No. 1632 of 1919.

*Indian Penal Code, section 193—Perjury in a deposition before a Civil Court not read out to the deponent—Civil Procedure Code, Act V of 1908, order 18, rule 5—whether secondary evidence is admissible to prove the deposition—Indian Evidence Act, I of 1872, section 91.*

The petitioner was accused of having made a false statement on oath in the Court of a Munsif. The Munsif stated in evidence in the present trial that this statement was not read out to the witness. The question before this Court was whether secondary evidence could be admitted to prove the making of the statement.

*Held*, that secondary evidence cannot be admitted in the trial of the petitioner for perjury to prove the making of the statement in the Munsif's Court.

*Empress v. Mayadeb Gossami* (1), *Mohendra Nath v. Emperor* (2), *Kamatchinathan Chetty v. Emperor* (3), and *Nalluri Chinchiah v. Emperor* (4), followed

*Romesh Chandra Das v. Emperor* (5) and *Crown v. Jagat Ram* (6), distinguished.

*Kahn Singh v. Empress* (7), not followed.

*Revision from the order of Pandit Kundan Lal, Beshist, Sessions Judge, Sialkot, dated the 20th November 1919, reversing that of Sardar Bahwant Singh, Nalwa, Magistrate, 1st Class, discharging the accused.*

SHEO NARAIN, for Petitioner,

DUNI CHAND, for Respondent.

CHEVIS C. J.—The petitioner in this case is accused of having made a false statement on oath in the Court

(1) (1881) I. L. R. 6 Cal. 762.

(2) (1908) 12 Cal. W. N. 845 (847).

(3) (1904) I. L. R. 28 Mad. 308 (310)

(4) (1919) I. L. R. 42 Mad. 561.

(5) (1919) 28 Cal. W. N. 611.

(6) 28 P. R. (Cr.) 1918.

(7) 25 P. R. (Cr.) 1890.

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of the Munsif. The Munsif has stated in evidence in the present trial that this statement was not read out to the witness. The first Court referred to *Kahn Singh v. Empress* (1), *Kamatchinathan Chetty v. Emperor* (2), and *Kartar Singh v. Crown* (3), and following the last ruling held that where the statement had not been read out there could be no conviction under section 193, Indian Penal Code. So the Magistrate discharged the accused.

The learned Sessions Judge held that there was no conflict between the two Punjab rulings, and referred to a later Punjab ruling *Crown v. Jagat Ram* (4), and quashed the order of discharge and remanded the case for the admission of secondary evidence to prove the making of the statement.

The question for my decision is whether such secondary evidence is admissible in a case where the evidence has not been read over in the presence of the witness as required by Order XVIII, rule 5 of the Civil Procedure Code.

In *Empress v. Mayadeb Gossami* (5), it is held that in such a case secondary evidence is barred by section 91 of the Evidence Act, *Mohendra Nath v. Emperor* (6), is also in favour of the petitioner. So is *Nalluri Chinchiah v. Emperor* (7). There is an older ruling *Kamatchinathan Chetty v. Emperor* (8), which also holds that secondary evidence is inadmissible.

For respondent reliance is placed on the following rulings *Romesh Chandra Das v. Emperor* (8), *Crown v. Jagat Ram* (4) and *Kahn Singh v. Empress* (1). The first case is not in point, for there the statement was read over by the witness, and this was held to be sufficient; there was therefore no need to prove the statement by secondary evidence. In *Crown v. Jagat Ram* (4) too no question as to the admissibility of secondary evidence was raised. The only ruling which in my opinion favours the respondent is *Kahn Singh v. Empress* (1).

(1) 25 P. R. (Cr.) 1890.

(2) (1904) 1 I. L. R. 28 Mad. 808 (310).

(3) 12 P. R. (Cr.) 1917.

(4) 28 F. R. (Cr.) 1918.

(5) (1881) I. L. R. 6 Cal. 762.

(6) (1908) 12 Cal. W. N. 845(847).

(7) (1919) I. L. R. 42 Mad. 561.

(8) (1919) 28 Cal. W. N. 661.

The weight of authority is clearly in favour of the petitioner, and I hold that secondary evidence is not admissible.

I accept this application for revision, and setting aside the order of the learned Sessions Judge I restore the order of the Magistrate discharging the petitioner.

*Revision accepted.*

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### MISCELLANEOUS CIVIL.

*Before Mr. Justice Chevis Acting Chief Justice, and Mr. Justice Le Rossignol.*

BISSA MAL (PLAINTIFF)—*Petitioner,*

*versus*

KESAR SINGH, ETC. (DEFENDANTS)—*Respondents.*

1920

Feb. 20

Civil Miscellaneous No. 464 of 1919.

(Civil Appeal No. 2379 of 1914.)

*Indian Limitation Act, IX of 1908, Article 168—Application for re-admission of an appeal dismissed in default—inherent powers of Court—Civil Procedure Code, Act V of 1908, section 151.*

This application for restoration of an appeal dismissed in default was filed on the 17th November 1919, the order dismissing the appeal was made on the 27th January 1919. The applicant urged that he was not to blame for his non-appearance and did not discover for several months that the appeal had been dismissed.

*Held,* that the application is barred by limitation under article 168 of the Limitation Act.

*Held also,* that the inherent powers of the Court under section 151 of the Code of Civil Procedure cannot be invoked in breach of the clear provisions of the Limitation Act.

*Debi Bakh Singh v. Habib Shah* (1), distinguished.

*Application for restoration of the appeal dismissed in default by the Chief Court on 27th January 1919.*

MEHR CHAND, for Petitioner.

KISHEN CHAND, for Respondents.