

APPELLATE CRIMINAL.

Before Mr. Justice Carr.

SAN DUN

v.

KING-EMPEROR.*

1924

Sep. 2.

Burma Habitual Offenders' Restriction Act, section 7—Code of Criminal Procedure (V of 1898), Chapter VIII Courts not competent to go outside the record—Evidence of general repute how far admissible—Possession of a revolver not provable by general repute—Section 117 (4), Code of Criminal Procedure—Judgment should disclose reasons for the finding arrived at—Sections 367 and 424, Code of Criminal Procedure.

Held, that under sections 367 and 424 of the Code of Criminal Procedure a judgment should disclose the reasons for arriving at the finding.

Held, also, that in proceedings under the Burma Habitual Offenders' Restriction Act as well as under Chapter VIII of the Code of Criminal Procedure, the Courts must not act on anything extraneous to the evidence on the record.

Held, also, that evidence of general repute was admissible only to the extent provided for in section 117 (4) of the Code of Criminal Procedure and that the possession of a revolver by the accused could not be held proved by the evidence that he was reputed to possess a revolver.

CARR, J.—An order of restriction under section 7 of the Burma Habitual Offenders' Restriction Act, 1919, has been passed against the petitioner. His appeal to the District Magistrate was admitted but the judgment of the District Magistrate does not comply with the requirements of sections 367 and 424 of the Criminal Procedure Code. All that the District Magistrate says is that he has considered the evidence carefully and thinks it is sufficiently strong to justify the order. Thus no reasons are given for the decision.

Moreover the District Magistrate says that he has made local enquiries. This seems to indicate the existence of an idea that in cases under this Act and

* Criminal Revision No. 424B of 1924 from the order of the Subdivisional Magistrate of Prome in Criminal Miscellaneous Trial No. 68 of 1924.

1924
SAN DUN
v.
KING-
EMPEROR.
CARR, J.

under Chapter VIII of the Criminal Procedure Code the ordinary rules of Criminal Procedure and of evidence are abrogated. This is an entirely erroneous idea but it appears to be somewhat widespread and it is therefore desirable to point out the the fallacy.

In cases such as this the Court must act on evidence duly recorded in the presence of the accused person and it is not open to it to take into consideration any information obtained otherwise than from such evidence. I am referring here, of course, to the final decision in the case, and not to the initiation of the proceedings.

Again, in such proceedings it is not everything that may be proved by evidence of general repute. The ordinary rules of evidence apply, with such modification only as is made by section 117 (4) of of the Code of Criminal Procedure. This clause lays down that "For the purposes of this section the fact that a person is an habitual offender or is so desperate or dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise." No extension of evidence of general repute beyond these limits is permissible.

This section is made applicable to the Habitual Offenders' Restriction Act by section 4 of that Act, and section 3 of the Act permits an order of restriction to be passed in any case in which under section 110 of the Criminal Procedure Code security could be required.

In this case the Magistrate found that the petitioner is such a dangerous person that it would be hazardous to leave him at large. But he bases this finding on the further finding that the petitioner surreptitiously owns a revolver, which, he says, is

“the most prominent point against him.” This finding is based solely on evidence that the petitioner is reputed to possess a revolver. There is no witness who has ever seen him with a revolver or who has any other grounds than information for believing that he has one. It is purely hearsay and since it does not relate to a fact which can be proved by evidence of general repute it is entirely inadmissible.

1924
 SAN DUN
 KING-
 EMPEROR.
 CARR, J.

ORIGINAL CIVIL.

Before Mr. Justice Lentaigne.

ROWE & CO., LTD.

v.

TAN THEAN TAIK.*

1924
 Sep. 3.

Presidency-Towns Insolvency Act (III of 1909), section 17—Suit filed without leave of Court against an insolvent, who was refused his discharge—Application for such suit to be stayed pending the obtaining of such leave whether tenable.

Held, that the refusal of his discharge to an insolvent did not determine the insolvency proceedings and that the bar against the commencement of a suit against him after the adjudication order continued to operate in spite of the refusal of his discharge.

Held, also, that a suit filed after such refusal without the leave of the Court being barred at the commencement, the Court should not order a stay of the proceedings pending the obtaining of the leave but should reject the plaint under Order 2, Rule 11 of the Code of Civil Procedure.

In re Dwarakadas Tejbandas, 40 Bom. 235 ; *Jenn Muchi v. Budhiram Muchi*, 32 Cal., 339 ; *V. M. Assan Mahomed Sahib v. M. E. Rahim Sahib*, 43 Mad. 579, —*referred to*.

Patel—for the Plaintiff.

Gregory—for the Defendant.

LENTAIGNE, J.—In this case the plaintiff sues the defendant for Rs. 3,407-10-0 as the balance due in respect of goods supplied to the defendant on credit to the value of Rs. 4,681-15-0 in the months of