

1927

U BA PE
AND ONE

v.

U PO SEIN
AND
OTHERS.

HEALD, J.

the elections of all the candidates except Maung Hla Baw.)

MYA BU, J.—I concur.

APPELLATE CRIMINAL.

Before Mr. Justice Carr.

KING-EMPEROR

v.

MUTU ALAGI.*

1927

Dec. 5.

*Burma Village Act (Burma Act VI of 1907), s. 20-A, and Rule 6 of the rules—
Powers of the Deputy Commissioner under s. 23—Money-lender taking
goods and chattels in pledge.*

Held, that a conviction by a Magistrate under the Burma Village Act is not an order under the Act, within the meaning of s. 23 of the Act; neither is a Magistrate when exercising jurisdiction as such "an authority subordinate to" the Deputy Commissioner.

Held accordingly that the Deputy Commissioner cannot revise a conviction by a Magistrate for an offence under the Burma Village Act.

Held, also, that a money-lender, genuinely carrying on business as such, does not commit an offence under sections 20-A of the Burma Village Act, by taking goods and chattels in pledge for advances of money on a promissory note or other document.

A. Eggar—(Government Advocate) for the Crown.
McDonnell for the respondent.

CARR, J.—The respondent, Mutu Alagi, was convicted by the Township Magistrate of Thegon of the "offence of receiving in pawn a gold ring—without a license in contravention of section 20-A of the Burma Village Act punishable under Rule 6 of the rules

* Criminal Appeal No. 1359 of 1927.

under section 20-A of the said Act" and was fined Rs. 30.

He applied to the Deputy Commissioner, Prome, for revision of the order, praying that it be set aside and that the fine be refunded to him. This application was registered as a "Criminal Revision" in the Court of the District Magistrate, Prome, and the first entry in the case diary was signed by the Deputy Commissioner as District Magistrate. The two subsequent entries were signed by him as Deputy Commissioner. This officer set aside the conviction and sentence passed on the respondent and directed that the fine and costs paid be refunded to him. In doing this he expressly acted as Deputy Commissioner and purported to act under the powers conferred on him by section 23 (2) of the Village Act.

This is an appeal by the Local Government against that order.

It is admitted by Mr. McDonnell for the respondent that the order was one made without jurisdiction and there is no doubt that this is the case.

The respondent was convicted by the Township Magistrate on a criminal trial and such conviction can only be set aside by a duly constituted court of criminal appeal or revision acting in exercise of the jurisdiction conferred on it by the Code of Criminal Procedure or other law. The Magistrate was a first class Magistrate and no appeal lay from the conviction and sentence of fine of Rs. 30. The District Magistrate had power to call for the case in revision but had no power to interfere with either the conviction or sentence. He could, if he thought fit, have referred the case to this Court with his recommendation.

The Deputy Commissioner is not a court of criminal appeal or revision and had no power to deal with the conviction and sentence in any way. In passing

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his order he evidently misconstrued the provisions of section 23 of the Village Act, which, so far as they now concern us are :—

“(1) An appeal shall not lie from any order made under this Act.

(2) But the Deputy Commissioner may revise any such order made by any authority subordinate to him ”

Now the conviction and sentence of a person for an offence made punishable by the Act or Rules made under it is not “an *order* made under this Act.” Nor is a magistrate when exercising his jurisdiction as such “an authority subordinate to” the Deputy Commissioner.

It has not been argued by Mr. McDonnell that since the Deputy Commissioner is not a criminal court this Court has no power to interfere with his order. I think there would be some force in such an objection, at any rate so far as concerns the power of this Court as a court of criminal appeal. But the question is not very material. It is undoubtedly the duty of this Court and within its powers on the matter being brought to its notice, to declare that the order of the Deputy Commissioner is of no effect as against the conviction and the sentence passed by the magistrate, and that the conviction and sentence remain in force until set aside by a competent court. I now record a declaration to that effect.

Mr. McDonnell has asked me also to consider in revision the correctness of the original conviction. The Government Advocate has raised no objection and this question has been argued.

Reviewing the proceedings of the magistrate I note in the first place that the conviction was wrong because section 20A. of the Village Act and the Rules under it do not create any such offence as that of

receiving an article in pawn without a license. What they do make punishable is the carrying on of the business of a pawn-broker, and it was of that offence that the respondent should have been convicted, if convicted at all.

Secondly the respondent was the wrong person to be tried for that offence. He was a mere clerk in the firm of An. Ar. Al. Alagappa Chettyar which carried on the business through its agent at Thaton. The proper person to be charged was therefore that agent. The respondent might possibly also be liable to conviction for abetment or even, applying section 34 of the Penal Code, of the substantive offence, but the prosecution of the agent would have been much more appropriate.

The next question is whether an offence has been committed at all. Section 20A of the Village Act provides that "No person shall keep a pawnshop or carry on the business of a pawn-broker except under and in accordance with rules made by the Local Government in this behalf." Sub-sections (2) and (3) give the rule making power. Rule 1 (a) made under this section reads:—

"1. In these rules—(a) 'Pawn-broker' means every person who carries on the business of taking goods and chattels in pawn for loans of money not exceeding Rs. 200 in any one transaction: provided that nothing in these rules shall apply to persons taking goods and chattels in pawn for loans exceeding Rs. 100, when the rate of interest or other profit does not exceed 15 per cent. per annum, *nor shall they apply to persons genuinely carrying on the business of money-lender and advancing money on a promissory note or other document.*"

Rule 6 provides that "Whoever carries on the business of a pawn-broker without a license . . .

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shall be punishable with fine which for a first offence may extend to fifty rupees”

There is a curious variety of phraseology in rule 1 (a) which makes it very difficult to say what was the probable intention of its framers. But it is claimed in this case that the respondent comes under the concluding words of the rule, which I have italicised and that therefore the rules do not apply to him at all.

It appears to be admitted that the An. Ar. Al. firm genuinely carries on the business of money-lender, and there can be no doubt that in this case the firm did advance the money in question on a “document.” The learned Government Advocate has pointed out that the document Ex. A is not a promissory note. That is so but there can be no doubt that it comes within the very wide terms “other document” It reads as follows :—

“The undersigned Maung Thein Maung borrows Rs. 10 with interest at Rs. 2-8 per cent. per mensem on a pledge of the gold mentioned in the list below. As regards the gold if within months from this date I do not pay the principal and interest the lender (name of firm) may sell (the gold)”

This document was signed by the borrower and from the evidence it appears that both the original and the counterfoil remained in the possession of the lender.

I am very clearly of opinion that such transactions as this when entered into by a genuine firm of money-lenders such as the An. Ar. Al. firm are exempted from the operation of the rules by the words in Rule 1 (a) already mentioned and that therefore no offence was committed either by the firm or by its servant, the respondent.

I therefore, in exercise of the revisional jurisdiction of this Court, set aside the conviction and sentence passed upon the respondent Mutu Alagi by the Township Magistrate of Thegon and direct that he be acquitted and that the fine and costs paid by him be refunded to him.

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PRIVY COUNCIL.

V.P.R.V. CHOCKALINGAM CHETTYAR (*Plaintiff*)

v.

E.N.M.K. CHETTYAR FIRM AND OTHERS
 (*Defendants*).

J.C.*
 1927
 Dec. 6.

(On Appeal from the High Court at Rangoon.)

Principal and Agent—Power of attorney—Subsequent registered deed of trust—Sale of immoveable property—Alleged revocation of power—Construction of deed — Properties not included in deed — Absence of description for registration.

A joint Hindu family carried on business as the K.P. firm with a branch in Pegu. In 1906 the manager of the family gave a power of attorney to S, the Pegu agent of the business, authorizing him to sell any of the immoveable property. In 1908, the business being in difficulties, the manager of the family executed a deed by which a trustee was given power to collect debts and pay creditors, and carry on the business, with power to sell properties mentioned in schedules. The Pegu properties were not mentioned in the schedules, but clause 21 of the deed provided "all properties, assets, claims and suit which may come under dispute of the K.P. firm have in this way been transferred to the trustee ; he has power to receive them as they are paid, to convert them all into money, and if convenient to transfer them to creditors." In 1912 S by a registered deed purported to sell part of the Pegu properties.

Held, that the trust deed, upon its true construction did not include the Pegu properties, as they were not mentioned in the schedules, and the deed contained no description identifying them as was necessary for purposes of

* PRESENT :—VISCOUNT SUMNER, LORD ATKINSON, LORD SINHA, SIR JOHN WALLIS and SIR LANCELOT SANDERSON.