

CRIMINAL REVISION.

*Before Mr. Justice Ba U.*MAUNG SAW MAUNG *v.* MA ME SHWE.*

1938

Aug. 26.

Receiver, offence by a—Sanction or leave of Court for prosecution—Receiver not a public servant—Criminal Procedure Code, s. 197.

No sanction or leave of a civil Court is necessary for the prosecution of a receiver appointed by the Court for a breach of the ordinary criminal law of the land committed by him. A receiver appointed by a Civil Court is not a public servant within the meaning of s. 197 of the Criminal Procedure Code.

Empress v. Municipal Corporation of Calcutta, I.L.R. 3 Cal. 758 ; *Kimchand v. Mulji*, I.L.R. 52 Bom. 898 ; *Lukmanji v. Valibhai*, A.I.R. (1934) Bom. 306 ; *Nagendra Nath v. Jogendra Nath*, 13 Cr.L.J. 491, referred to.

U Olu Maung v. Ebrahim, I.L.R. 6 Ran. 268, distinguished.

Santok Chand v. Emperor, I.L.R. 46 Cal. 432, dissented from.

Kya Gaing for the applicant.

Respondent in person.

BA U, J.—This is a reference made by the District Magistrate of Myaungmya under the following circumstances :

In Civil Regular No. 125 of 1937 of the Township Court of Wakema, Maung Soon Hwat sued Saya Kyai for recovery of a certain sum of money alleged to be due on the mortgage of a piece of paddy land. On the same date on which he filed the suit, he applied for the appointment of a receiver to take charge of the mortgaged property. Saw Maung, Headman of Wegyi, was appointed interim receiver. Two days after his appointment he went with some villagers to take charge of the mortgaged property. The property was at the time in the possession of Ma Me Shwe, daughter-in-law of the defendant Saya Kyai. In spite

* Criminal Revision No. 266B of 1938 arising out of Criminal Trial No. 2 of 1938 of the Subdivisional Magistrate (1), Wakema.

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of her protest Saw Maung took possession of the land and its produce. In consequence thereof she filed a complaint in the Court of the Subdivisional Magistrate of Wakema, charging Saw Maung and his companions with having committed an offence punishable under section 392/114 of the Penal Code. The Magistrate accepted the complaint and after an examination of the complainant and her witnesses he charged Saw Maung under section 506 (1) and his companions under section 506 (1)/109 of the Penal Code.

Saw Maung therefore applied to the District Magistrate to move this Court to quash the proceedings on the ground that a receiver cannot be prosecuted criminally for acts or omissions made by him in his capacity as receiver without the sanction of the Court which appointed him. This submission was accepted by the learned District Magistrate and in so doing he relied on *U Ohn Maung v. Ebrahim* (1) and *Santok Chand v. Emperor* (2). The first case does not apply. What it lays down is that

“ a receiver cannot either sue or be sued without the permission of the Court which appointed him and that if a Court entertains a suit or appeal arising out of such suit without such leave, it acts without jurisdiction.”

It thus deals with the jurisdiction of civil Courts only and not with the jurisdiction of Criminal Courts.

The second case does, however, in a way support the view of the learned District Magistrate. What it lays down is that

“ a receiver appointed by the High Court, who has, under its order, taken possession of property cannot be prosecuted for criminal breach of trust in respect of the same without first obtaining the leave of the Court.”

(1) (1927) I.L.R. 6 Ran. 268.

(2) (1918) I.L.R. 46 Cal. 432.

This view has, however, been dissented from by the High Court of Bombay in two cases, namely, *Kimchand N. Bhavsar v. Devkaran Mulji and others* (1) and *Lukmanji Kamruddin v. Valibhai Karimbhai* (2). In the first case, Patkar J. with the concurrence of Baker J., said :

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“ With regard to criminal prosecution the matter stands on a different footing. Part VI, Chapter XV, clause B, of the Criminal Procedure Code, lays down the conditions requisite for institution of proceedings. Sections 195, 196, 196A, 196B, 197, 198, 199 and 199A lay down the provisions as to when the Court shall take cognizance of the offences specified in those sections. There is no provision in the Criminal Procedure Code requiring the leave of the Court to prosecute a receiver before taking criminal proceedings against him. It may be desirable to bring to the notice of the Court, which appointed the receiver, the offence committed by the receiver in execution of the orders of the Court and obtain the leave of the Court before prosecution. But we think that we shall be trespassing on the functions of the legislature if we were to hold that the leave of the civil Court is a condition precedent to the Magistrate's taking cognizance of a complaint against the receiver appointed by the Court. A criminal offence by a receiver would be clearly in respect of an act committed in excess of the authority of the receiver appointed by a civil Court, and the reason of the rule requiring leave of the Court before suing the receiver would not apply to a criminal prosecution against the receiver, for violation of the criminal law.”

In the second case, Murphy J. said with the concurrence of Divatia J., that

“ a receiver is not one of the public servants mentioned in section 197 of the Code of Criminal Procedure and that therefore no sanction is necessary for his prosecution.”

Even Fletcher J. of the Calcutta High Court took a view similar to the view taken by the Bombay High

(1) (1928) I.L.R. 52 Bom. 898.

(2) A.I.R. (1934) Bom. 306.

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Court in *Nagendra Nath Srimoney v. Jogendra Nath Srimoney and others* (1) where the learned Judge said that

“no sanction is necessary to proceed against a receiver appointed by the Court for a breach of the ordinary Criminal law of the country.”

In my opinion, the Bombay High Court and Fletcher J. have laid down the law correctly.

“The right to prosecute any person, or body of persons, by whom one may have been injured, is a common right which can only be limited by special legislation ; and in considering whether the right has been taken away, we must see that it is taken away by express words, or by necessary implication ;”

per Ainslie J. in *The Empress v. The Municipal Corporation of the Town of Calcutta* (2).

The only check placed on such a right by the legislature is to be found in sections 195, 196 (a) (in a limited manner) and 197, Criminal Procedure Code. Of these sections, section 197 is the one that is applicable. Even in the case of this section, unless the person concerned is a Judge, Magistrate or public servant not removable from office save by or with the sanction of the Government and unless the act complained of has been committed by the accused while acting or purporting to act in the discharge of his official duty, he is liable to prosecution. A receiver is not a public servant within the meaning of section 197, Code of Criminal Procedure, and so no sanction of the Court which appointed him is necessary for his prosecution for a breach of the ordinary Criminal law of the country.

With these remarks the proceedings may be returned.

(1) 13 Cr. L.J. 491.

(2) (1878) I.L.R. 3 Cal. 758.