

CRIMINAL REVISION.

Before Mr. Justice Jardine and Mr. Justice Ranade.

1896.

January 20.

IMPERATRIX v. KESHAVLAL JEKRISHNA AND OTHERS.*

*Penal Code (Act XLV of 1860), Secs. 426 and 441—Criminal trespass—Mischief—
Who may complain?*

The words "any person in possession" in section 441 of the Indian Penal Code do not mean only "a complainant in possession."

Certain persons were prosecuted under sections 426 and 447 of the Indian Penal Code (Act XLV of 1860) for committing mischief and criminal trespass by entering upon a certain field which was in the possession of the complainant's tenants and destroying the seed sown therein.

The defence raised was an *alibi*; it was also contended on behalf of the accused that the field belonged to one of them, and that the complainant had no title whatever to it.

The Magistrate, who tried the case, declined to go into the question of title; he found that the complainant's tenants were in possession of the field; and disbelieving the evidence of *alibi* he convicted the accused and sentenced them to fine.

On application in revision to the High Court it was urged (*inter alia*) that the complainant, not being the person in possession, could not legally institute the criminal proceedings, and that, therefore, the conviction was bad.

Held that, looking to the nature of the false defence set up by the accused, this was not a case for interference in revision, as to do so would encourage perjury.

Held, also, that the words "any person in possession" in section 441 of the Indian Penal Code do not mean only "a complainant in possession," there being no authority for taking the offences of mischief and criminal trespass out of the general rule which allows any person to complain of a criminal act.

Reference in the case of Kalinauth Nag Chowdhry(1), *Chandi Pershad v. Evans*(2), *Iswar v. Sital*(3), and *In Re Ganesh Sathe*(4) referred to.

THIS was an application under section 435 of the Code of Criminal Procedure (Act X of 1882) for the exercise of the High Court's criminal revisional jurisdiction.

The accused were charged with having entered and ploughed up a field in the possession of the complainant. They were convicted of mischief and criminal trespass under sections 426 and 447 of the Penal Code (Act XLV of 1860).

* Application for Criminal Revision, No. 387 of 1895.

(1) 9 Cal. W. R., 1 Cr. R.

(3) 8 Beng. L. R., App., 62.

(2) I. L. R., 22 Cal., 123.

(4) I. L. R., 13 Bom., 600.

The accused at the trial pleaded an *alibi*. The first accused (Keshavlal) further pleaded that he was the owner of the land in question, and that the complainant had no title to it.

The Magistrate disbelieved the evidence as to the *alibi* and declined to go into the question of title. He found that the complainant was in possession, through his tenants. He convicted the accused, and sentenced them to pay a fine.

The accused applied to the High Court under its revisional jurisdiction.

Robertson (with him *Ramdatt Vithoba Desai*), for the accused:—The defence was that the land was not the complainant's, but belonged to the first accused (Keshavlal). If it was Keshavlal's, he had a right to enter and plough it, and his doing so was no offence. The Magistrate ought to have referred the complainant to a civil Court in order that the question might be properly tried. If he desired to try the case himself, he should have heard our evidence of title.

Again, the complainant was not himself in possession of the land, nor was he the person injured by the conduct of the accused. He was not the person in possession contemplated by section 441 of the Penal Code. He ought not, therefore, to be allowed to be the complainant in this case—*Kalimuth Nag Chowdhry*⁽¹⁾; *Chandi Pershad v. Evans*⁽²⁾; *Iswar v. Sidál*⁽³⁾; Bacon's Abridgement—Trespass, p. 554; 4 Comyn's Digest; Indictment, p. 372; Hale's Pleas of the Crown, pp. 514, 515; Archbold, p. 5; Stephen's History of the Criminal Law, 495.

(The Court referred to *In Re Ganesh Sathe*⁽⁴⁾.) That was a case in which Magistrates were accused of purchasing their offices, a matter in which the general public are interested. This is an entirely different case and is not of the slightest importance to the public.

There was no appearance for the Crown.

JARDINE, J.:—This is not a case for interference by revision. The plea of the accused under section 242 of the Code of Criminal

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Procedure was *alibi*; and the Magistrate is clearly of opinion that the evidence of *alibi* was false. Thereupon he convicted. It would encourage perjury if this Court re-opened the case on the ground that one of the accused was owner of the land, and that he entered on it with the others, and ploughed it on a *bonâ fide* claim of right.

Mr. Robertson contended that the only person having a right to complain of criminal trespass is the person in possession or the person injured, and cited *Reference in the case of Kalinanth Nag Chowdhry*⁽¹⁾, *Chandi Pershad v. Evans*⁽²⁾.

We do not think it can be contended that the learned Judges meant to say that in section 441 of the Penal Code the words "any person in possession" mean only "a complainant in possession." Nor is that construction supported by *Iswar v. Sital*⁽³⁾. The destruction of the crop must have been damaging or annoying to the owner or tenant or both as in the present case. The leading authority on the question of criminal law, who may complain? is *In Re Ganesh Sathe*⁽⁴⁾.

Mr. Robertson sought to distinguish that case on the ground that the complaint there related to higher misdemeanours, corrupt purchases of judicial offices, a matter of immense public concern. But he has shown us no authority for taking the offences of mischief and criminal trespass out of the general rule which allows any person to complain of a criminal act. Exceptions are made by statute: if by our decision we added a new exception to Chapter XV of the Code of Criminal Procedure, we would invade the functions of the Legislature.

The Court rejects the petition.

Petition rejected.

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