

power, under section 88 of the Transfer of Property Act, to pass in such a suit a decree for sale, ordering that, in default of the defendant paying as directed by the decree, the mortgaged property or a sufficient part thereof be sold. The lower Court's decree, directing the sale of the portion of the mortgaged property which is in the hands of the mortgagors (respondents Nos. 1 to 3) first, before the appellants can proceed against the property in the hands either of respondent No. 4 or respondent No. 5, must be upheld as being in substantial compliance with section 88, unless the appellants are able to satisfy the Court that the direction in question has prejudiced or is likely to prejudice their rights: *Appayya v. Rangayya*⁽¹⁾. No such complaint having been made in the lower Court of appeal, it should not be allowed in second appeal. On these grounds the decree must be confirmed with costs.

1911.

SUBBANA
DIN
VENKATESH
v.
GANPA.

Decree confirmed.

R. R.

(1) (1908) 31 Mad. 419 at p. 423.

CRIMINAL REVISION.

Before Mr. Justice Chandawarkar and Mr. Justice Heaton.

IN RE BABA YESHWANT DESAI.*

1911.

April 11.

Criminal Procedure Code (Act V of 1898), sections 119, 200, 437—Security for good behaviour—Discharge by Magistrate—District Magistrate ordering fresh inquiry—Accused—Discharge—Interpretation.

A District Magistrate can, under section 437 of the Criminal Procedure Code, 1898, order fresh inquiry into the case of a person "discharged" by a Subordinate Magistrate under section 119 of the Code.

The phrase "any accused person" as used in section 437 is not confined in its application to a person against whom a complaint has been made under section 200 of the Code. It includes a person proceeded against under Chapter VIII of the Code.

The term "discharged" is not defined in the Code, and there is no valid ground for departing in respect of it from the rule of construction that where

* Criminal Application for Revision, No. 58 of 1911.

1911.

BABA
YRSHWANT
DESAI,
In re.

in a Statute the same word is used in different sections it ought to be interpreted in the same sense throughout unless the context in any particular section plainly requires that it should be understood in a different sense.

Queen-Empress v. Mutasaddi Lal(1), *King-Emperor v. Fyaz-ud-din*(2) and *Queen-Empress v. Mona Puna*(3), followed.

Queen-Empress v. Iman Mondal(4) and *Velu Taxi, Ammal v. Chidambaravelu Pillai*(5), not followed.

THIS was an application to revise an order passed by J. Brander, District Magistrate of Ratnagiri.

The applicant was asked to furnish security for good behaviour under Chapter VIII of the Criminal Procedure Code. The trying Magistrate heard witnesses examined by the prosecution and defence, and discharged the applicant.

On an application having been made to him, the District Magistrate, acting under section 437 of the Criminal Procedure Code, set aside the order of discharge and directed a fresh inquiry against the applicant to be held before another Magistrate.

The applicant applied to the High Court.

B. V. Desai for the applicant.

G. S. Rao, Government Pleader, for the Crown.

The following cases were referred to:—*Muhammad Khan v. King-Emperor*(6); *Queen-Empress v. Iman Mondal*(4); *Velu Taxi Ammal v. Chidambaravelu Pillai*(5); *Queen-Empress v. Mona Puna*(3); *Queen-Empress v. Mutasaddi Lal*(1); and *King-Emperor v. Fyaz-ud-din*(2).

CHANDAVARKAR, J.:—The question before us is whether the District Magistrate has jurisdiction under section 437 of the Code of Criminal Procedure to order a fresh inquiry into the case of a person “discharged” by a Subordinate Magistrate under section 119 of the Code. The decision of the question turns upon the interpretation of the words “any accused person” and “discharged” used in section 437. There is no definition of “accused person” in the Code, and we see no sound reason for

(1) (1898, 21 All. 107.

(2) (1901) 24 All. 148.

(3) (1892) 16 Bom. 661.

(4) (1900) 27 Cal. 632.

(5) (1909) 33 Mad. 85.

(6) (1905) P. R. No. 42 of 1905 (Cr.),

confining its application to a person against whom "a complaint" has been made under section 200 of the Code. Persons proceeded against under Chapter VIII of the Code are persons against whom there is an accusation in the ordinary acceptation of the word. The word "discharged" is also not defined in the Code, and there is no valid ground for departing in respect of it from the rule of construction that, where in a Statute the same word is used in different sections, it ought to be interpreted in the same sense throughout, unless the context in any particular section plainly requires that it should be understood in a different sense. We think that we should follow the rulings of the Allahabad High Court, *Queen-Empress v. Matasaddi Lal*⁽¹⁾ and *King-Emperor v. Fyaz-ud-din*⁽²⁾, which follow the decision of this Court in *Queen-Empress v. Mona Puna*⁽³⁾; and not the rulings in *Queen-Empress v. Iman Mondal*⁽⁴⁾ and *Velu Tayi Ammal v. Chidambaravelu Pillai*⁽⁵⁾. The rule is accordingly discharged.

Rule discharged.

R. R.

(1) (1858) 21 All. 107.

(3) (1892) 16 Bom. 661.

(2) (1861) 24 All. 148.

(4) (1900) 27 Cal. 662.

(5) (1909) 33 Mad. 82.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

BAI MAHAKORE AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS,
v. BAI MANGLA AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1911.

April 12.

Deposit—Husband depositing money in wife's name in his shop—Interest allowed over the amount—Deposittee allowed to withdraw—Husband acknowledging trust—Creation of trust—Trusts Act (II of 1882), sections 5 and 6—Transfer of Property Act (IV of 1882), sections 5, 5A.

D. made a credit entry of Rs. 20,000 in his books in the name of his wife H. carrying interest at $4\frac{1}{2}$ per cent. The entry was made on the 1st November 1891 as of the 30th November 1890. The amount of Rs. 20,000 was treated as belonging to H. in the *Sarvaya* (balance sheet) in the *Samadaskat* book

* First Appeal No. 223 of 1908.