

1918.

sufficient to make the conduct of the accused amount to a criminal offence under section 336 of the Indian Penal Code.

EMPEROR

v.

ABAS MIRZA.

Under these circumstances I agree in thinking that the conviction should be set aside and the fine, if paid, refunded.

Rule made absolute.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Shah and Mr. Justice Marten.

*In re HUBERT CRAWFORD.**

1918.

January 15.

Criminal Procedure Code (Act V of 1898), section 514—Forfeiture of bond—Bond for appearance taken under the City of Bombay Police Act (Bombay Act IV of 1902), sections 106, 107†—Jurisdiction of Chief Presidency Magistrate to order forfeiture.

*Criminal Application for Revision No. 406 of 1917.

†The sections run as under :—

106. When any person, other than a person accused of a non-bailable offence, is arrested or detained without warrant by an officer in charge of a section and is prepared at any time while in custody of such officer to give bail, such person shall be released on bail :

Provided that such officer, if he thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

107. (1) When any person accused of any non-bailable offence is arrested or detained without a warrant, by an officer in charge of a section, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

(2) If it appears to such officer at any stage of the investigation that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

The Presidency Magistrate of Bombay has no jurisdiction, under section 514 of the Criminal Procedure Code, to order forfeiture of bonds taken under sections 106 and 107 of the City of Bombay Police Act, 1902.

1918.

In re
CRAWFORD.

THIS was an application to revise an order passed by Chunilal H. Setalvad, Acting Chief Presidency Magistrate of Bombay.

One George William Clegg was arrested in Bombay on the 1st April 1917 for an offence under section 420 of the Indian Penal Code. He was released on bail by the Police on a recognizance of Rs. 1,000 with one surety for the like amount, under section 107 of the City of Bombay Police Act (Bombay Act IV of 1902). On the 6th idem, he was re-arrested for an offence under section 408 of the Code and he was again released on bail on a personal recognizance of Rs. 150 with a surety for the like amount. In both cases, the applicant Crawford stood surety for Clegg.

Whilst investigation in the two cases was going on, Clegg ran away from Bombay to Calcutta where he lived under the name of George William. He was arrested at Calcutta and brought back to Bombay for trial. He was tried but was acquitted in both cases.

Proceedings were then started against Clegg and Crawford, under section 514 of the Criminal Procedure Code, to show cause why their bonds should not be forfeited.

At the hearing, the applicant raised a contention that the Magistrate had no jurisdiction to proceed under section 514 of the Criminal Procedure Code. In overruling the contention, the Magistrate observed as follows :—

As to the question whether this Court has jurisdiction to deal with the matter under section 514, Criminal Procedure Code, I think I have. I am aware in coming to the conclusion that the learned Advocate General as well as the learned Public Prosecutor have advised that this Court has no jurisdiction

1918.

to deal with the bonds. I am told this though I have not had the advantage of seeing their opinions.

In re
CRAWFORD.

There is no provision in the Police Act to forfeit the bonds taken under it. The scheme of the Legislature seems to be *not* to give the police the power to forfeit a bond. At the same time the cumbrous machinery of enforcing payment of the amount of a bond by civil proceedings is considered unsuitable and a summary procedure for forfeiture is intended to be provided. Sections 496, 497 and 499 of the Criminal Procedure Code are more or less framed on the same lines as sections 107 and 108 of the Bombay District Police Act. So far as bonds *generally* are concerned there is a provision that action may be taken by the Court by which the bond has been taken or by a Court of a Presidency Magistrate or a Magistrate of the First Class. Section 514 seems to provide for three classes of cases :—

- (a) Bond taken by a Court for appearance before itself.
- (b) Bond taken by the Police for appearance before them or a Court.
- (c) Bond taken by one Court for appearance before another Court.

The bond which a Presidency Magistrate or a Magistrate of the First Class can deal with need not have been taken by the Magistrate and it need not be for appearance before him. Obviously therefore that provision is among other bonds intended to cover bonds that are taken by the Police for appearance before themselves.

No doubt at first sight the word "such" in para. 3 of section 514 (1), Criminal Procedure Code, seems to create a doubt and difficulty but it appears to me that the word "such" does not connote a bond "taken under this Code" (i.e., Criminal Procedure Code). It is, I think, used so as to include all the bonds referred to in the preceding paragraphs. Thus I think being a Presidency Magistrate I have under section 514, Criminal Procedure Code, jurisdiction to deal with bonds taken under the provisions of the Bombay District Police Act.

On merits, both bonds were ordered to be forfeited. Clegg was ordered to forfeit Rs. 50 out of the first, and Rs. 15 out of the second bond. Crawford was ordered to forfeit Rs. 300 out of the first and Rs. 15 out of the second bond.

Crawford applied to the High Court.

P. N. Godinho, for the applicant.

S. S. Patkar, Government Pleader, for the Crown.

1918.

In re
CRAWFORD.

SHAH, J. :—The order, the legality of which we have to consider, relates to two bonds taken under the City of Bombay Police Act of 1902. These bonds were taken under sections 106 and 107 of the Act, whereby one Clegg undertook to appear at a certain police station on a certain day and on subsequent days as directed, and the applicant before us stood surety for him in respect of both the bonds. The learned Presidency Magistrate has found that Clegg absconded from Bombay and that the bonds were broken. On that footing he has made an order directing a partial forfeiture of both these bonds.

The question of law which arises on this application is whether the Court of the Presidency Magistrate had any jurisdiction to direct these bonds to be forfeited under section 514, Criminal Procedure Code. It is common ground that that is the only section, under which, if at all, the Magistrate would have jurisdiction. It is also common ground that these bonds are not taken under the Code of Criminal Procedure, and that they are not “bonds for appearance before a Court”. They are bonds taken under the City of Bombay Police Act for appearance before the Police. The question is whether section 514 of the Code applies to such bonds.

The learned Magistrate has come to the conclusion that these bonds can be dealt with by him under section 514. After a careful consideration of the arguments addressed to us, I am of opinion that such bonds cannot be dealt with under section 514. “Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court, of a Presidency Magistrate, or a Magistrate of the First Class, or when the bond is for appearance before a Court, to the satisfaction of such Court, that such bond has been forfeited,” the Court can deal with the matter as provided in the section. It is urged on behalf of the

1918.

In re
CRAWFORD.

Crown, that the words "such bond" must be liberally construed so as not to defeat the object of section 514, and that if so construed they would include not only a bond under the Code of Criminal Procedure or the bond for appearance before a Court but also such bonds as we have in the present case. I am in full sympathy with the argument that the words should be construed as far as possible so as not to defeat the obvious purpose of section 514; but I am unable to interpret these words as including the bonds in question. They are admittedly not bonds under the Code and they are not bonds for appearance before a Court. I do not see how by any straining of the words "such bond" it could be said that the bonds, though not falling under either of the two categories, can still be dealt with under section 514.

It is not necessary for the purpose of this case to express any opinion as to whether the bond "for appearance before a Court" can include within its meaning a bond not taken under the Code. I have assumed for the purpose of this case that a bond though not under the Code if it be for appearance before a Court may be within the meaning of the expression used in the second para. of sub-section 1 of section 514. Even on that footing I do not see how a bond not taken under the Code and not for appearance before a Court can be treated as being within the scope of the section. It may be as the learned Magistrate points out that the intention of the Legislature was to include even such bonds within the scope of section 514; but we are concerned with the meaning of the words used. I am satisfied that the words are not susceptible of the construction put thereon by the Magistrate. If necessary, the section can be amended by the Legislature so as to give power to the Presidency Magistrates to deal with such bonds as we have in the present case.

1918.

In re
CRAWFORD.

I am, therefore, of opinion that the Magistrate had no jurisdiction to direct any forfeiture of these bonds and that his order must be set aside as having been made without jurisdiction. Though this application is made by the surety only, having regard to our conclusion we must exercise our power under section 439, Criminal Procedure Code; and set aside the order not only as regards the present applicant but also as regards Clegg.

I may add that our order will be without prejudice to the rights and remedies, if any, of the Crown in respect of these bonds. The only point that is decided is that the remedy sought in the present proceedings under section 514 is not open to the Crown.

Before leaving this case, I desire to express my disapproval of the reference made to the opinions of the Public Prosecutor and the Advocate General by the learned Magistrate in his judgment. In my opinion no reference to these opinions should have been allowed by him.

The amount, if paid, must be refunded.

MARTEN, J. :—I agree. As regards the intention of the Legislature I think, speaking for myself, that we can only ascertain that intention from the Code itself. With every desire to give a wide construction to the Code, I am quite satisfied that the bonds in question do not fall within section 514. As regards the argument that the words “the bond for appearance before a Court” include a bond taken under the City of Bombay Police Act for appearance before a Court, I agree with what my learned brother has said, viz., that it is unnecessary for us to decide that point, for the bonds in question were not for appearance before a Court. I also agree that no reference should have been made in the learned Magistrate’s judgment to certain opinions taken

1918.

on behalf of the prosecution. The question of jurisdiction was for the Magistrate to decide, and counsel's opinion, whether correct or not, was irrelevant.

In re
CRAWFORD.

Rule made absolute.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Shah and Mr. Justice Marten.

EMPEROR *v.* AMIRSAHEB BALAMIYA PATIL.*

1918.

January 15.

*Indian Forest Act (VII of 1878), section 25, clause (i), Rule 3 (a)†—
Shooting in a reserved forest without license—Tracking and shooting a tiger
to preserve one's property.*

The accused, finding that his cattle were killed by a tiger, tracked and shot the animal in a reserved forest without a license.

Held, that the accused was guilty of a technical offence under Rule 3 (a) framed under the provisions of section 25, clause (i) of the Indian Forest Act, 1878.

THIS was an application in revision against conviction and sentence passed by M. G. Ghode, Third Class Magistrate at Bhiwandi, confirmed on appeal by the First Class Magistrate at Thana.

The accused had several head of cattle killed by a tiger. To prevent further injury, he armed himself with

* Criminal Application No. 353 of 1917.

† The material portion of the rule runs as follows:—

3. (a) In any Reserved or Protected forests or portions of Reserved or Protected forests to which the Local Government may, for the purpose of strict conservation or for the preservation of animals which are becoming rare, or for both of these purposes, apply this and the following rules by a Notification published in the *Bombay Government Gazette*, hunting and shooting are prohibited except under a license to be obtained from the Conservator of Forests.