

CRIMINAL REVISION.

Before Mr. Justice Heaton and Mr. Justice Pratt.

EMPEROR v. DEVAPPA RAMAPPA NAIK.*

Criminal Procedure Code (Act V of 1898), sections 435 and 439—High Court—Criminal revisional jurisdiction—Power to interfere with order passed under para. 1 of section 2 of the Workmen's Breach of Contract Act (XIII of 1859)—Contract to carry logs of timber for long distances—Contract does not fall under the Act.

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The High Court has power, under sections 435 and 439 of the Criminal Procedure Code, 1898, to revise an order passed by a Magistrate directing either return of the advance or specific performance of the contract, under para. 1 of section 2 of the Workmen's Breach of Contract Act, 1859.

The accused entered into an agreement with the complainant engaging to remove 100 logs of timber from a forest to a forest depot, a distance of 22 miles, and received an advance of Rs. 440. The accused having failed to carry out the contract, was tried under section 2 of the Workmen's Breach of Contract Act, 1859, and was ordered to repay the advance. On application under criminal revisional jurisdiction :—

Held, that the contract in question was not a contract of an artificer, workman or labourer and did not fall within the purview of the Act.

THIS was an application under criminal revisional jurisdiction against an order passed by S. T. Fernandez, Magistrate, Second Class, at Ankola, confirmed on appeal by H. Tupper, District Magistrate of Kanara.

The accused agreed with the complainant to carry 100 logs of timber weighing 300 *khandis* in the aggregate from a forest compartment to a forest depot, a distance of 22 miles, and received an advance of Rs. 440. The terms of the agreement were as follows :—

In the Subguli Forest Compartment No. 16, you having cut the trees marked by Government and having prepared beams thereof have stored the same in the said compartment. I have agreed to carry (literally bring) therefrom to the Hattikeri Depot 100 beams weighing 300 *khandis*, each net *khandi* measuring 13 cubic feet, in consideration of taking hire (from you)

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at Rs. 1-14-0 per *khandi* of 13 cubic feet and to stack them at the place that may be pointed out by you. In respect of the said work I have this day taken from you Rs. 440 in cash and given this agreement in writing. As to the work of carrying beams as mentioned above I shall deliver 300 *khandis* agreed to be delivered, between the 1st of October and the end of May next, 1918, at the Hattikeri Depot. The work of carrying the said beams, I shall do on my personal responsibility and with my personal labour. If you should pay money, &c., in respect of the said work the same together with the advance money received this day will be deducted from the amount of hire due to me and after completing the work (as above) I shall take back this agreement with your endorsement thereon. Before finishing your work I shall not take up other's work. If in contravention of the above, that is, if I act contrary to any of the conditions mentioned above, I shall be liable to a criminal offence for breach of contract under the Contract Act. The contract is duly given in writing as above.

The accused failed to carry out the contract, for which he was tried by the Magistrate under section 2 of the Workmen's Breach of Contract Act, 1859. The trying Magistrate held that the contract in question fell within the purview of the Act and ordered the accused to repay Rs. 440. This order was, on appeal, confirmed by the District Magistrate.

An application was then made by the accused to the High Court to revise the order.

V. R. Sirur, for the applicant.

Nilkanth Atmaram, for the opponent.

PRATT, J.:—This is an application for a revision of an order made by the Second Class Magistrate under section 2 of the Workmen's Breach of Contract Act (XIII of 1859) directing the refund of money advanced. The order of the Second Class Magistrate was made on the 9th April 1918 and it was confirmed on appeal by the District Magistrate on 1st August 1918.

A preliminary objection is taken that revision by this Court is incompetent and that the application for revision is time-barred.

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Now section 2 of the Workmen's Breach of Contract Act is explained in the case of *Emperor v. Balu Saluji*⁽¹⁾ as divisible into two parts. The first part is an inquiry into the fact whether a breach of contract has occurred and in the event of the breach of contract being proved that inquiry concludes with an order directing either return of the advance or specific performance of the contract. The second part is an independent proceeding ensuing on disobedience of the order made on the first part. It is this second proceeding that is penal. For there is no offence unless and until the order made under the first part has been disobeyed. It is on this construction of the section that the preliminary objection is raised that whereas the order made in this case by the Magistrate is an order under part I, the proceeding is not of a criminal, but of a civil nature and therefore not subject to revision by this Court. In my opinion there is no substance in this objection. The power of revision of this Court under sections 435 and 439 of the Criminal Procedure Code refers to any proceeding before any inferior Court situate in the local limits of our jurisdiction. The test is not the nature of the proceeding held by the Court, but the nature of the Court in which that proceeding is held. Proceedings of a civil nature may be held in a criminal Court, as for instance, applications for maintenance under section 488 of the Criminal Procedure Code, and these are subject to revision under section 435. The Legislature evidently considered that proceedings in reference to easements and possession of moveable property, though of a civil nature, *may* be subject to revision by the High Court for they have been made the subject of the special exemption enacted in sub-section 3 of section 435. Further the case of *In re Chinto Vinayak Kulkarni*⁽²⁾ is a case in which this Court revised an order made

⁽¹⁾ (1908) 33 Bom. 25.⁽²⁾ (1900) 2 Bom. L. R. 801.

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under part I of section 2 of the Workmen's Breach of Contract Act.

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As to limitation it is true that the appeal to the District Magistrate was incompetent. An appeal lies to the District Magistrate under section 407 of the Criminal Procedure Code only in the case of a conviction. But as the proceeding under section 2 of the Workmen's Breach of Contract Act had not reached the stage of part II of that section, there had been no offence and therefore no conviction. The period of limitation will therefore run from the date of the order made by the Second Class Magistrate, i.e., 9th April 1918. But the rule of sixty days for revisional applications is not inflexible and, in the circumstances, I think it fair that allowance should be made for the time occupied in the proceeding before the District Magistrate. I would, therefore, disallow the objection as to limitation and entertain the application on the merits.

To come to the merits the contract was a contract of cartage on which the applicant engaged to remove 100 logs of wood from a forest to a forest depot, a distance of 22 miles, at a fixed rate of Rs. 1-11-0 for every *khandy* of 13 cubic feet of wood carted. Now the cases show that a contract of this sort is not a contract of an artificer, a workman or a labourer: see *Queen-Empress v. Hanma*⁽¹⁾ and *Caluram v. Chengappa*⁽²⁾. Those cases refer to contracts of cartage and proceed on the ground that contracts did not show that the person contracting to have the work done bound himself to render personal labour. It is sought to distinguish this contract on the ground that it does include a covenant that the applicant "shall do the work on his own personal responsibility and with his personal labour." But it is admitted even by the complainant that

(1) (1891) Ratanlal's Cri. Cas. 537.

(2) (1889) 13 Mad. 351.

this part of the contract was not to be acted upon. There was no probability or even possibility of the applicant doing personal labour and it was not expected that he should do so. This clause, therefore, does not operate to confer upon the applicant the status of artificer, workman or labourer.

There is a further covenant in the contract that in case of breach it shall be enforced according to the provisions of the Workmen's Breach of Contract Act. But an agreement of parties cannot confer jurisdiction, for "when the Judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot, by their mutual consent, convert it into a proper judicial process": *Ledgard v. Bull*⁽¹⁾.

I would, therefore, allow the application and reverse the order made by the Second Class Magistrate.

HEATON, J.:—I agree. Apart altogether from authority, I have no doubt whatever that the applicant does not in consequence of the contract between him and the complainant become an artificer, a workman or a labourer. The work which he undertook to do was the work of a contractor and not the work of an artificer, or of a workman, or of a labourer.

Order reversed.

R. R.

(1) (1886) L. R. 13 I. A. 134 at p. 145.