

1920.

GITABAI
v.
KRISHNA
MALHARI.

There it is said : " If the tenant not only openly asserts to the knowledge of the owner an adverse interest, but proceeds to enjoy benefits claimable only on the basis of that interest, his possession at once becomes adverse and limitation begins to run against the owner from that time". But in the present case the defendant did not enjoy any benefits other than those derived from his being a tenant under the mortgagee, so that under the principle there laid down, the defendant's possession was not adverse to the mortgagor.

I concur, therefore, in allowing the appeal.

Decree reversed.

J. G. R.

CRIMINAL REVISION.

Before Mr. Justice Shah and Mr. Justice Crump.

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In re GOVIND PANDURANG.*

August 24.

Indian Penal Code (Act XLV of 1860), sections 192, 193—False evidence—Fabrication—Judicial proceedings—Execution proceedings—Criminal Procedure Code (Act V of 1898), section 195 (b)—Sanction to prosecute—Pending proceedings.

For the purpose of sections 192 and 193 of the Indian Penal Code, 1860, execution proceedings are judicial proceedings.

It is not essential for the purpose of these sections that the judicial proceeding in which the person intends to use the false evidence must be pending at the date of the fabrication.

In the absence of any proceeding, pending or disposed of, in which or in relation to which the offence under section 193 of the Indian Penal Code is said to have been committed, no sanction under section 195 (b) of the Criminal Procedure Code is necessary.

* Criminal Revision No. 194 of 1920.

THIS was an application under the criminal revisional jurisdiction to revise an order of discharge passed by D. N. D. Khandalavala, acting Fifth Presidency Magistrate of Bombay.

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The complainant charged the accused with fabricating false evidence for the purpose of using it in a judicial proceeding, an offence under section 193 of the Indian Penal Code.

The facts which gave rise to the offence were as follows.

The complainant's father obtained a consent decree against the accused's father for Rs. 75 in the Court of the Subordinate Judge at Rajapur. In satisfaction of the decree, the accused sent to the complainant's mother a registered letter at Parel. The letter stated that Rs. 75 in currency notes were enclosed with the letter in discharge of the decree; but no notes were sent.

The accused raised a preliminary objection before the trying Magistrate that sanction of the Rajapur Court was necessary under section 195 of the Criminal Procedure Code.

The objection prevailed with the Magistrate, who dismissed the complaint, on the following grounds:—

"I am of opinion that execution proceedings subsequent to the termination of a suit are not judicial proceedings. In the alternative it is urged that the accused would come under second para. of section 193, Indian Penal Code. It seems to me that the present case does not fall under this part of the section either."

The complainant applied to the High Court.

A. R. Gadkari, for the applicant.

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

SHAH, J.:—This is an application by the complainant for the revision of the order dismissing the complaint

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and discharging the accused. The trial Magistrate was of opinion that the execution proceedings would not be judicial proceedings, and that, therefore, the alleged fabrication of false evidence could not fall under the first part of section 193 of the Indian Penal Code. He was also of opinion that the allegations in the complaint did not bring the case under the second part of that section. It was urged on behalf of the accused that the sanction of the Court at Rajapur, which had passed the decree in favour of the complainant, was necessary under section 195 (b), Criminal Procedure Code. The learned Magistrate apparently thought that his view that the execution proceedings were not judicial proceedings was decisive of the complaint, and he expressed no opinion on the question of sanction. He overruled the contention of the complainant that the complaint would be covered by the second part of section 193 of the Indian Penal Code.

We are of opinion that the learned Magistrate is wrong in his view that the execution proceedings are not judicial proceedings for the purpose of sections 192 and 193 of the Indian Penal Code. It is not essential for the purpose of these sections that the judicial proceeding in which the person intends to use the false evidence must be pending at the date of the fabrication. It is clear, therefore, that the complaint cannot be dismissed on the ground that the execution proceedings are not judicial proceedings.

It is urged, however, on behalf of the accused and the contention is supported by the Crown, that the sanction of the Court at Rajapur is necessary under section 195 (b), Criminal Procedure Code. It is difficult to understand why any sanction of that Court under section 195 is necessary in this case. There was a decree passed by that Court; and payment is said to

have been made by the accused outside the Court to the complainant. The complaint is made with reference to certain acts of the accused relating to the alleged payment. There was no execution proceeding actually pending in that Court at the time of the alleged payment. It has been stated before us on behalf of the complainant, and not challenged on behalf of the accused, that no execution proceeding is pending. Nor is it asserted that the judgment-debtor has made any application to that Court to have this payment certified in accordance with the provisions of the Code of Civil Procedure. Despite the statement in the complaint that a judicial proceeding is pending in the Court at Rajapur, it must be taken for the purpose of the present application, that there was no proceeding pending at the date of the alleged offence before that Court. It is clear, therefore, that no sanction of that Court is necessary. In the absence of any proceeding pending or disposed of, in which or in relation to which the offence under section 193, Indian Penal Code, is said to have been committed no sanction under section 195 (b) is necessary. The clause cannot apply to any future judicial proceeding, for which the false evidence may have been fabricated.

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The question raised on behalf of the complainant as to whether the offence would be covered by the second part of section 193 does not arise. We, therefore, make the rule absolute, set aside the order of discharge and send back the case to the trial Court in order that the complaint may be dealt with according to law.

Rule made absolute.

R. R.