

support my views by these observations. Indeed, as I have said, the history of the legislation attracted my attention after my judgment was written. But the point is not without interest and this contemporaneous exposition of what was then believed to be the law, is not without value in considering the intention of the Legislature.

I now come to the facts of this case. [His Lordship discussed facts.]

I must hold that adultery is proved.

Held by a majority :—

That the District Court of Poona had no jurisdiction to pass a decree for dissolution of marriage.

That adultery of the respondent No. 1 with respondent No. 2 was proved.

Decree for judicial separation.

The District Court to determine question of alimony and the custody of the children.

The petitioner to pay the costs of respondent No. 1 and to recover such costs and his own from respondent No. 2.

Order accordingly.

J. G. R.

CRIMINAL REVISION.

Before Mr. Justice Shah and Mr. Justice Kajiji.

In re RAMBHARATHI HIRABHARATHI*.

*Indian Penal Code (Act XLV of 1860), sections 4, 182, 193 and 211—
Criminal Procedure Code (Act V of 1898), section 188—Act committed in a Native Indian State—Certificate of Political Agent—Trial of accused in a British Indian Court.*

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The applicant and the three opponents lived at Surat. They went to a village in the Baroda State, where one of the opponents charged the applicant before the Baroda Police with criminal breach of trust. The applicant was tried by the Vyara Court, where the three opponents deposed on behalf of the prosecution. They were, however, disbelieved and the applicant was acquitted. The applicant applied for and obtained sanction from the Vyara Court to prosecute the opponents for giving false information to the Vyara Police, and for making a false charge and giving false evidence against him in the Vyara Court. He also obtained a certificate from the Resident at Baroda under section 188 of the Criminal Procedure Code. The applicant then instituted proceedings in the Court of the City Magistrate at Surat charging the opponents with offences punishable under sections 182, 193 and 211 of the Indian Penal Code :—

Held, that the complaint could not be entertained by the City Magistrate at Surat, inasmuch as the acts charged against the opponents, having been committed in relation to Courts and authorities outside British India, did not constitute offences under the Indian Penal Code.

THESE were applications in revision against orders passed by M. B. Lalaji, City Magistrate of Surat.

The applicant and the three opponents resided at Surat. They went to attend a fair at Unai (in the Baroda State). The applicant sat there on the banks of the river begging for alms. The opponents entrusted their clothes to him and went to bathe in the river. On their return they charged him with misappropriating a waist-coat containing valuables. One of them informed the Police Constable at Vyara (in Baroda Territory) charging the applicant with criminal breach of trust in respect of the waist-coat. The applicant was placed for trial before the Magistrate at Vyara, when all the opponents deposed against him. They were disbelieved, however, by the Magistrate, who acquitted the applicant. The latter subsequently applied to the Magistrate for sanction to prosecute the opponents for giving false information to the Vyara police, and for preferring a false charge and giving false evidence before the Vyara Magistrate. The sanction being granted, the applicant then applied to the Resident at

Baroda for a certificate under section 188 of the Criminal Procedure Code. The certificate was issued on December 30, 1922.

On December 21, 1922, the applicant instituted proceedings against the opponents in the court of the City Magistrate at Surat, charging them with offences punishable under sections 182, 193 and 211 of the Indian Penal Code. The Magistrate returned the complaint on December 22, saying: "Return to the complainant for presenting the complaint before the proper Magistrate, as the offence has been committed completely within Baroda State limits: section 201, Criminal Procedure Code".

The applicant applied to the Sessions Judge at Surat; but the learned Judge declined to interfere on the ground that he had no jurisdiction to revise an order returning the complaint.

The applicant applied to the High Court.

M. B. Dave, for the applicant.

Ratanlal Rañchhoddas for *H. V. Divatia*, for the three opponents.

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

SHAH, J.:—The applicant, who is the original complainant, filed information in the Court of the City Magistrate of Surat against the opponent in each of these three applications charging him with offences punishable under sections 182, 193 and 211, Indian Penal Code, or some of them. The acts complained of, viz., the giving of false information to a public servant, the giving of false evidence and falsely charging the complainant with an offence, were all committed at Vyara, in the Baroda territory and before a public servant or the Court of the Baroda State at Vyara. The complainant and the accused in these cases are native Indian subjects of His Majesty. They had gone from Surat to a place of

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pilgrimage called Unai in the Baroda territory in connection with the annual fair held there in April 1921. The accused Nagindas is said to have entrusted his clothes with certain articles including cash to the complainant there. The said accused prosecuted the complainant in the Vyara Court of the Baroda State on a charge of criminal breach of trust punishable under the Penal Code of the Baroda State in connection with the said entrustment, and the accused in the two companion cases gave evidence against the complainant; but the complainant was acquitted. It is in connection with these proceedings that these accused persons are said to have given false information and false evidence and to have made a false charge in the Court of that State.

The complainant is stated to have obtained the sanction of that Court as required by the rules of procedure in that State for prosecuting these accused persons in respect of the offences as constituted by the said acts punishable under the Baroda law. The parties are Indian subjects of His Majesty and ordinarily live in British India. The complainant seeks to prosecute the accused in British India in respect of the acts committed outside British India. Though at the date of complaints the necessary certificate of the Political Agent under section 188, Criminal Procedure Code, was not obtained, the complainant has subsequently obtained it. The learned Magistrate made the following order on December 22, 1922 :—

“Return to the complainant for presenting the complaint before the proper Magistrate, as the offence has been committed completely within Baroda State limits : section 201, Criminal Procedure Code.”

It does not appear whether the learned Magistrate made this order simply because no certificate under section 188, Criminal Procedure Code, was produced or because no offences punishable under the Indian Penal Code were disclosed. We are now

informed by the Government Pleader that the order was made as no certificate under section 188, Criminal Procedure Code, was produced at the time. The complainant applied to the Sessions Court for a revision of this order. By this time he had obtained the necessary certificate under section 188. The Sessions Judge was of opinion that in view of the certificate under section 188, the complaints could be proceeded with but he declined to interfere as he thought that he had no jurisdiction to revise an order under section 201, Criminal Procedure Code. Accordingly he dismissed the applications. The complainant has now applied to this Court to have the order of the Magistrate returning the complaint set aside and for a direction that the complaint as originally filed be proceeded with. If the only difficulty in the way of the applicant was the absence of the certificate under section 188, Criminal Procedure Code, at the date of the complaints we should allow these applications as the certificate has been obtained subsequently. But there is a fundamental difficulty in his way.

On the facts as alleged in the complaints the question is whether any offence punishable under the Indian Penal Code is disclosed. If no such offence is disclosed, it is obvious that we cannot properly direct the complaints to be proceeded with. This question was not raised in the lower Courts and does not appear to have been considered by them. As it arises, however, on the allegations in the complaint we cannot ignore it. We considered it desirable to ask the Government Pleader to appear and we have now heard full arguments on behalf of the Crown, the complainant and the accused on the interesting question whether the acts alleged to have been committed by the accused at Vyara are punishable under the Indian Penal Code. I am of opinion that these acts do not constitute any offence punishable under the Indian Penal Code.

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Section 4 of the Indian Penal Code is relied upon as showing that the provisions of the Code apply to any offence committed by any Native Indian Subject of His Majesty without and beyond British India and that the word 'offence' includes every act committed outside British India which if committed in British India would be punishable under the Code. This section provides that any Indian subject of His Majesty is liable to be punished for an offence punishable under the Code committed outside British India and that the 'offence' includes any act committed outside British India which would be punishable under the Code if committed in British India. It gives certain extra-territorial jurisdiction in respect of acts committed outside British India by certain classes of persons including the Indian subjects of His Majesty: but it does not affect the nature of the act. The act alleged must amount to an offence punishable under the Code. There is no provision in the Code which constitutes it an offence to lodge a false complaint in a foreign Court or to give false evidence before such Court where the oath is not administered under the provisions of law in force in British India, but under the law of that State in relation to proceedings before that Court. All the acts attributed to the accused are said to have been done either before the Police Officer or the Court at Vyara with reference to proceedings which were held according to the law of the Baroda State. For instance, in this case, no offence under section 182, Indian Penal Code, can be made out as it is not suggested that false information was given to a 'public servant' as defined by the Indian Penal Code, quite apart from the consideration that it was given without and beyond British India. As regards the offence under section 193, Indian Penal Code, it is not suggested that the accused were legally bound by oath, i.e., oath administered

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under the provisions of law in force in British India or by any express provision of law, i.e., law in force in British India, to state the truth before the Vyara Court. The provisions of the Indian Oaths Act cannot apply to the statements in question. We have considered the provisions of sections 1, 4, 5 and 14 of the Indian Oaths Act as bearing on this question. Though the Act extends to the territories of Native Princes and States in alliance with His Majesty so far as regards the subjects of His Majesty, the Vyara Court cannot be treated as a Court within the meaning of sections 4 and 14 of the Act, in relation to proceedings which were held before that Court entirely under the law of that State, and which had nothing to do with any proceedings in British India or under the law in force in British India. The oaths were administered to the accused persons as witnesses by the Vyara Court under the law obtaining in the Baroda territory. While perjury before that Court by an Indian subject of His Majesty would be as objectionable as perjury before a Court in British India, it is not punishable under section 193 of the Indian Penal Code, when it is committed in a foreign Court in relation to entirely foreign proceedings.

As to the charge under section 211, Indian Penal Code, the accused Nagindas is said to have instituted criminal proceedings at Vyara against the complainant and to have falsely charged him before the Vyara Court. The criminal proceedings and false charges contemplated by section 211 must mean proceedings instituted and charges made according to the provisions of criminal law in force in British India. The section occurs in a Chapter relating to offences against public justice which under the Indian Penal Code must mean public justice in British India unless it is expressly otherwise provided.

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In the course of the argument it was conceded that it would be difficult to make out any offence punishable under sections 182 and 193 : but it is contended that the expressions "institutes any criminal proceedings" and "falsely charges" in section 211 are general, and should be interpreted as including criminal proceedings and false charges before a foreign Court like the Vyara Court. No authority is cited in support of this proposition : and on general rules of construction it seems to us that the criminal proceedings and false charge within the meaning of section 211 must mean proceedings and charge in British India, where the Indian Penal Code is in force, though it is conceivable that a person may be able to institute such proceedings or make such a charge while he is actually in foreign territory. The criminal proceedings taken and the false charge made before the Vyara Court are not within the scope of the section.

We have not overlooked the fact that the complainant also is an Indian subject of His Majesty, and that the offence of criminal breach of trust charged against him before the Vyara Court would be an offence punishable under the Indian Penal Code in virtue of the provisions of section 4 of the Code. But that fact does not alter the nature of the proceedings before the Vyara Court nor does it affect in any way the nature of the acts alleged against the accused in the present proceedings.

No other provision of law has been referred to as justifying these proceedings before a Magistrate in British India on the allegations in the complaint.

We cannot, therefore, order these complaints to be further proceeded with.

We discharge the rules.

Rules discharged.

R. R.