

CRIMINAL REVISION.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Nanavati.

1932
July 14.

SHRIRANG JAYAPA VICHARE AND ANOTHER (ORIGINAL ACCUSED
NOS. 2 AND 4), APPLICANTS v. EMPEROR.*

Criminal Procedure Code (Act V of 1898), sections 435 and 439—Revision—High Court's power in revision.

Under sections 435 and 439 of the Criminal Procedure Code, 1898, the High Court has an absolute discretion to interfere in revision in any case, but that discretion ought only to be exercised in order to prevent substantial injustice, or, where there is involved a point of law of general importance which may govern other cases.

Per *Beaumont C. J.* "A practice seems to have grown up in this Presidency of entertaining applications in revision wherever the decision of the lower Court involves some point of law. But in my opinion there is no justification for this practice since the Code of Criminal Procedure gives no right of appeal upon points of law analogous to that given in civil cases by section 100 of the Code of Civil Procedure."

CRIMINAL REVISION APPLICATION made against the order passed by R. S. Bawadekar, Sessions Judge, Thana, confirming the conviction and sentence passed by K. R. Shitut, Magistrate, First Class, Mahad.

Petitioners were charged under sections 143, 506 and 504 of the Indian Penal Code for the offences of being members of an unlawful assembly, criminal intimidation and insult with intent to cause a breach of the peace. The Magistrate convicted the petitioners of the offence of insult under section 504 of the Indian Penal Code and directed that the petitioners do enter into a bond under section 562 (1) of the Indian Penal Code in the sum of Rs. 30 for a period of one year. Against this conviction and sentence the petitioners appealed to the Sessions Judge who summarily dismissed the appeal.

Petitioners applied to the High Court.

B. N. Gokhale, for the petitioners.

P. B. Shingne, Government Pleader, for the Crown.

*Criminal Revision Application No. 159 of 1932.

The judgment of the Court was delivered by BEAUMONT C. J. This is an application in revision made in these circumstances. The two accused were convicted under section 504 of the Indian Penal Code. The learned Magistrate came to the conclusion that it was a dispute between villagers of no great consequence, and he therefore merely required the accused to enter into a bond under section 562 (1) of the Criminal Procedure Code in a sum of Rs. 30 with a surety of Rs. 30 for a period of one year. From that order the accused appealed to the Sessions Judge at Thana who rejected the appeal summarily, and he now comes to this Court in revision. The contention is that on the facts proved the case did not come within section 504 of the Indian Penal Code, because the insults proved were not intended or likely to lead to a breach of the peace.

I think there is no force in that contention, but in any case I think that we should not interfere in revision. I have said before, and I wish to repeat, that powers of revision are not in my judgment given to this Court in order that we may interfere in every case in which a question of law arises. The Criminal Procedure Code gives a right of appeal in certain cases, but in cases where the sentence is below a certain limit there is no right of appeal to the High Court. A practice seems to have grown up in this Presidency of entertaining applications in revision wherever the decision of the lower Court involves some point of law. But in my opinion there is no justification for this practice since the Code of Criminal Procedure gives no right of appeal upon points of law analogous to that given in civil cases by section 100 of the Code of Civil Procedure. The High Court has an absolute discretion under sections 435 and 439 to interfere in revision in any case, but in my opinion

1933

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that discretion ought only to be exercised in order to prevent substantial injustice, or, where there is involved a point of law of general importance which may govern other cases. In the present case two Courts have held that the facts bring the case within section 504 of the Indian Penal Code, and no question of general importance is involved. It is obvious that the sentence inflicts no serious hardship on the accused. In my view this application should have been rejected summarily and it will now be dismissed.

Rule discharged.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Patkar and Mr. Justice Barlee.

BASLINGAWA REVANSHIDAPPA UMBARJI (ORIGINAL PLAINTIFF), APPELLANT
v. CHINNAVA KARIBASAPPA (ORIGINAL DEFENDANT), RESPONDENT.*

1931
October 5.

Transfer of Property Act (IV of 1882), section 55, (4)(b)—Vendee's suit for possession—Purchase money unpaid—Vendor's lien—Conditional decree for possession—Statutory charge of the vendor for the unpaid purchase money can be embodied in the decree.

In a suit for possession by the vendee of immoveable property it is not competent to the Court to pass a decree for possession conditional on the vendee paying the balance of the purchase money, but it is open to the Court, while decreeing possession to the vendee, to incorporate in the decree the statutory charge, under section 55 (4)(b) of the Transfer of Property Act, in favour of the vendor for the unpaid purchase money.

Velayutha Chetty v. Govindasami Naiken,⁽¹⁾ *Velayutha Chetty v. Govindasami Naiken*⁽²⁾ and *Krishnamma v. Mali*,⁽³⁾ followed.

Nilmadhab Parhi v. Hara Proshad Parhi,⁽⁴⁾ *Shib Lal v. Bhagwan Das*⁽⁵⁾ and *Baijnath Singh v. Paltu*,⁽⁶⁾ dissented from.

The statutory charge given by section 55 (4) (b) of the Transfer of Property Act stands on a different footing from the vendor's lien. It is a charge upon the property in the hands of the buyer or any transferee without consideration or any transferee

*Letters Patent Appeal No. 1 of 1929.

⁽¹⁾ (1907) 30 Mad. 524.

⁽²⁾ (1910) 34 Mad. 543.

⁽³⁾ (1920) 43 Mad. 712.

⁽⁴⁾ (1913) 17 Cal. W. N. 1161.

⁽⁵⁾ (1888) 11 All. 244 at p. 251.

⁽⁶⁾ (1908) 30 All. 125.