

APPELLATE CRIMINAL.

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

EMPEROR v. YESA KOM NANA DIDWAGH AND TWO OTHERS
(ORIGINAL ACCUSED NOS. 1 TO 3)*.

1936
November 18

Indian Registration Act (XVI of 1908), sections 81, 82, 83—Document—Execution—Falsely personating another before registering officer—Offence not having come to the knowledge of officer—Prosecution started without permission of officer, if competent—Indian Penal Code (Act XLV of 1860), sections 419, 467.

Section 83 of the Indian Registration Act, 1908, is not prohibitory either in terms or in intention. It is an enabling section.

The section deals only with a prosecution for any offence under the Act "coming to the knowledge of a registering officer in his official capacity". It has no application to cases in which offences are committed under the Act, but these offences do not come to the knowledge of the registering officer.

Gopi Nath v. Kuldip Singh⁽¹⁾ and *Re Nadathi*,⁽²⁾ followed.

Emperor v. Muhammad Mehdi⁽³⁾ and *Nga Pan Gaing v. King-Emperor*,⁽⁴⁾ doubted.

CRIMINAL REFERENCE made by B. D. Mirchandani,
Additional Sessions Judge, Satara.

Sanction to prosecute.

After the death of her husband, Rama, land R. S. No. 138/9 situated at Divad in the Satara District stood in the name of his widow, Chandra. She married again and left the village.

It was alleged that on August 23, 1934, Yesa (accused No. 1) who was Rama's mother, falsely executed a collusive sale-deed purporting to be passed by Chandra in favour of her nephew Aba (accused No. 2) and it was further alleged that she falsely personated Chandra and that Maruti (accused in case No. 32) falsely identified Yesa as Chandra before the Sub-Registrar.

*Criminal Reference No. 123 of 1936.

⁽¹⁾ (1885) 11 Cal. 566 F. B.

⁽²⁾ (1917) 40 Mad. 880.

⁽³⁾ (1934) 57 All. 412 F. B.

⁽⁴⁾ (1926) 4 Ran. 437.

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At the time of the village inspection the Revenue Circle Inspector learnt of the forgery and the fraud played upon the Registering authorities. The matter was accordingly reported to the Mahalkari under whose order he subsequently made a complaint to the Police.

The Police investigated into the matter and sent up to the First Class Magistrate, Khatav, two cases—one against Yesa and Aba and the other against Maruti—charging the accused under sections 419, 467 and 109 of the Indian Penal Code and section 82 (c) of the Indian Registration Act. On completing the inquiry the Magistrate committed the accused to the Sessions Court for trial.

The Additional Sessions Judge was of opinion that the prosecution was bad for want of sanction of the Registration authorities to start a prosecution under the Indian Registration Act. In referring the matter to the High Court with a recommendation that the commitment should be quashed, he expressed his view as follows :—

“ The following two questions, therefore, arise for consideration :

(1) Is permission of the authorities referred to in section 83 of the Indian Registration Act necessary before the accused can be prosecuted for offence under section 82 of the Indian Registration Act ?

(2) Does the permission now accorded by the District Registrar of Satara on 31st August 1936 validate the committal proceedings ?

Section 83 (1) of the Registration Act runs as follows : ‘ A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the Branch Inspector General of Sindh, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed ’.

As almost every High Court before whom the section has come up for interpretation has remarked, the language of the section is neither happy nor free from difficulty. The result is that there is no unanimity as to the proper interpretation to be put on the section. The Allahabad High Court has consistently maintained that previous sanction of the Registration authorities is essential for a valid prosecution for offences under the Registration Act (see I.L.R. 37 Allahabad 107, 38 Allahabad 354 and 39 Allahabad 293). The Rangoon High Court is also of the same opinion that a prosecution for offences under the Registration Act cannot be started without the permission mentioned in section 83 of that Act. The Calcutta High

Court was also at one time of the opinion that permission of the Registration authorities was necessary (see I.L.R. 10 Calcutta 604), but a later decision of the High Court reported in I.L.R. 11 Calcutta 566 dispenses with the same sanction. The High Courts of Madras and Patna are of the contrary opinion that no permission is necessary for prosecution of offences under the Registration Act. There is unfortunately no guidance from our High Court on the point as the question does not seem to have at any time arisen before Their Lordships. In recent Full Bench decision of the Allahabad High Court reported in I.L.R. 57 Allahabad 412 all the existing authorities are reviewed and the previous view of that High Court confirmed. I personally find myself in agreement with the reasoning of Their Lordships of the Allahabad High Court in that case, and am inclined to the same view that a permission of the Registration authorities is necessary for starting a prosecution for offences under the Registration Act.

Section 83 (1) contemplates prosecution (1) by the Registration authorities themselves or (2) by private persons with the permission of the officers of the Registration Department. Its language does not provide for prosecution in any other way, that is, by private persons without the permission of the Registration authorities. It is true that there are no words expressly excluding prosecutions in that manner but the intention of the legislature obviously appears to have been to prevent private persons from dragging persons committing offences against Registering authorities to Court without the permission of the Registration authorities. The offences under the Registration Act are primarily offences against the Registration authorities though incidently they may affect private parties also. In the present case, therefore, either the Revenue Circle Inspector or the Police should have obtained permission of the Registration Department before launching a prosecution against the three accused. The prosecution is, therefore, bad for want of the necessary sanction. Nor can section 532 of the Criminal Procedure Code validate these irregular commitments by the Magistrate. For section 532 does not apply to a case where there is no question that the Magistrate committing the accused for trial to the Court of Sessions had power to do so but the only defect in the proceedings is that there was no previous sanction; (see I.L.R. 43 Bom. 147). Nor do I think the failure to obtain the previous sanction of the Registration authorities can be condoned under the provisions of section 537, Criminal Procedure Code. For if the view that permission of the Registration authorities is necessary to a prosecution is correct, then the proceedings held by the learned Magistrate are without jurisdiction and section 537, Criminal Procedure Code, cannot cure the defect."

The reference was heard.

S. G. Patwardhan for *G. B. Chitale*, for accused Nos. 1 and 2.

J. C. Shah for *B. N. Lokur*, for accused No. 3.

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

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BEAUMONT C. J. This is a reference made by the Additional Sessions Judge of Satara asking us to quash a committal order under section 215 of the Criminal Procedure Code. Certain persons have been committed by the Magistrate to the Sessions Court of Satara on charges under sections 419 and 467, read with sections 109 and 114 of the Indian Penal Code, and section 82, sub-sections (c) and (d) of the Indian Registration Act. The learned Judge takes the view that the prosecution under section 82 of the Indian Registration Act is incompetent without the sanction of the registration authority under section 83 of the Act, and for that reason he invites us to quash the committal order. The question whether a sanction to a prosecution under section 82 of the Indian Registration Act is required under section 83 has given rise to a difference of opinion amongst certain of the High Courts of India, but this Court does not seem to have expressed any opinion upon the subject.

Now reading the Act in the first place, apart from authority the sections of the Act imposing penalties are sections 81 and 82. Section 81 imposes a penalty on a registering officer and every person employed in his office for the purpose of the Act who commits certain offences, and section 82 deals with offences committed before a registering officer. The section deals with making a false statement before a registering officer, intentionally delivering to a registering officer a false copy or translation of a document, falsely personating another in any proceeding or inquiry under the Act, and abetment of any of those offences. Then comes section 83 which provides that :

“(1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Branch Inspector-General of Sindh, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.”

I must confess that but for the difference of opinion which has arisen on the construction of the Act, I should have thought that its meaning was perfectly plain. Section 83

deals only with a prosecution for any offence under the Act "coming to the knowledge of a registering officer in his official capacity," and it provides in effect that where an offence comes to the knowledge of the registering officer in his official capacity, a prosecution may be commenced by or with the permission of the officers mentioned in the section. But the section has no application whatever to cases in which offences are committed under the Act, but those offences do not come to the knowledge of the registering officer. In a majority of cases probably the registering officer does not know whether a document produced before him is a false document or not, or whether a person appearing before him is personating some other person. To those cases section 83 seems to me in terms to have no application whatever. This view of the section has been taken by the High Court of Calcutta in *Gopi Nath v. Kuldip Singh*⁽¹⁾ and by the High Court of Madras in *Re Nadathi*.⁽²⁾ On the other hand the High Court of Allahabad in a series of cases, of which the latest is a full bench decision, *Emperor v. Muhammad Mehdi*,⁽³⁾ has taken the view that section 83 is a prohibitory section, and that it prevents any prosecution under section 81 or section 82 without the sanction of the officers specified in section 83. That view has also been adopted by the Rangoon High Court in *Nga Pan Gaing v. King-Emperor*.⁽⁴⁾ The learned Judges who take that view have given reasons, as to the cogency of which I am not altogether satisfied, for thinking that the Legislature must have intended that no prosecution should take place under the Indian Registration Act without the sanction of the registration officers. But they have entirely failed to bring conviction to my mind that, if the Legislature ever entertained such an intention, they have given effect to it by section 83 of the Act. There are a great many enactments which constitute offences, and prohibit any prosecution in respect of those offences without

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(1) (1885) 11 Cal. 566, F. B.
 (2) (1917) 40 Mad. 880.

(3) (1934) 57 All. 412, F. B.
 (4) (1926) 4 Ran. 437.

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obtaining a certain sanction. One may illustrate section 195 and the following sections of the Criminal Procedure Code in which the phraseology adopted is that no Court shall take cognisance of certain offences without obtaining a certain sanction. Another illustration is the Indian Stamp Act, section 70, in which the phraseology is that no prosecution in respect of any offence punishable under the Act shall be instituted without a certain sanction. And again section 29 of the Arms Act of 1870, where the language provides that where an offence has been committed, no proceeding shall be instituted without previous sanction. Those are clearly prohibitory sections. Section 83 of the Indian Registration Act is not prohibitory, as far as I can see, either in terms or in intention. On the contrary, it is an enabling section and provides that a prosecution for any offence which comes to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of specified registration officers. I am quite unable to construe that section as being of a prohibitory character. In my opinion, therefore, the committal order was correct, and no order will be made on the reference.

MACKLIN J. I agree. To my mind there is no cogent reason for not giving to the section the literal meaning of the words used, which is that, when a prosecution for an offence under the Act does come to the knowledge of a registering officer in his official capacity, then he or some one with his permission may start a prosecution. So far as it goes, the Act does not in terms prevent a prosecution from being started by a private person not in an official capacity. What it does do is to enable an official to start a prosecution in his official capacity. But for the enactment of that section I take it that the ordinary rule that any one may set the criminal law in motion would still have applied; but a prosecution for an offence under this Act, even if started by one of the officers named in section 83 or with his permission,

would still have been a prosecution not in an official capacity but in a private capacity. What the section does is to enable the officers named to use their official position for the purpose of prosecution without personal risk, and I do not think that any other interpretation of the section is justified by the words used.

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Order upheld.

Y. V. D.

APPELLATE CRIMINAL.

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

BAI DHANKOR, WIDOW OF DAYASHANKAR GULABDAS
 (ORIGINAL ACCUSED NO. 2), APPELLANT v. EMPEROR.*

1936
 November 23

Criminal Procedure Code (Act V of 1898), sections 421 and 439—Appeal by the accused—First hearing—Court satisfied as to correctness of conviction, but not of sentence—Court to issue notice to Crown before dismissing appeal summarily—Appeal and notice to be heard together—Practice.

When an appeal first comes on for hearing in which the Court thinks that the conviction is clearly right on the merits, but there is ground for thinking that the sentence is rather too severe, the appeal should not be dismissed summarily. It should be directed to stand over, and at the same time notice should be served on Government under section 439 of the Criminal Procedure Code, 1898, to show cause why the sentence should not be reduced. The Court should also send for the record.

The notice and the appeal should be heard on the same day and if, after hearing the Crown, the Court comes to the conclusion that the sentence should be reduced, the Court should reduce the same under section 439 of the Code. And the Court may, if so minded, then say that there is no ground for interfering with the conviction or sentence so reduced, and make an order dismissing the appeal under section 421 of the Code.

Emperor v. Dahu Raut,⁽¹⁾ referred to.

* Criminal Appeal No. 368 of 1936.

(1) (1935) 37 Bom. L. R. 557, s. c. 62 Cal. 983, r. c.