

1901  
FEB. 15 & 26.

PRIVY  
COUNCIL.

28 C. 353.

again the Subordinate Judge's order of 9th April 1892, which indeed the High Court did not disturb in any respect, but that of the kasht lands.

The respondents must pay to the appellants the costs of this appeal, including those of an application made by them for delay on the ground that an appeal preferred by them from the High Court decree of June 1891 was pending before this Board.

*Appeal allowed.*

Solicitors for the appellants : Messrs. *Watkins & Lempriere.*

Solicitors for the respondents : Messrs. *T. L. Wilson & Co.*

28 C. 362.

[362] CRIMINAL REVISION.

*Before Mr. Justice Prinsep and Mr. Justice Handley.*

RAJ KISHORE PATER (*Petitioner*) v. JOY KRISHNA SEN  
(*Opposite Party.*)\* [16th July, 1900].

*Criminal breach of trust—Refusal to pay to a person money claimed by another—False claim—Suit brought by person claiming—Penal Code (Act XLV of 1860), s. 406.*

An accused person should not be convicted of criminal breach of trust on refusing to give to the complainant money, which is claimed by another person as well as by the complainant, and which the accused denies is due to the complainant.

The fact that that other person has brought a suit to recover the amount claimed by him against the accused is a complete answer to the charge of criminal breach of trust against the accused, and to the findings of the Courts that the claim made by that other person was a false claim.

IN this case the accused was employed by the complainant and other persons to sell their paddy. The accused sold the paddy to a Marwari, from whom he received the full price. The complainant claimed Rs. 107-8, the price of forty bags of paddy, but, as the price of some of the forty bags were claimed by one Naloo, the accused declined to pay the complainant the sum claimed by him, until the dispute between him and Naloo had been settled. The accused was charged before the Deputy Magistrate of Balasore with criminal breach of trust in respect of the price of the forty bags of paddy. Naloo was examined on behalf of the accused, and it was found that his was a false claim. Whilst the trial was proceeding, Naloo brought a suit against the accused to recover the sum claimed by him. The accused was convicted on the 5th of May 1900 under s. 506 of the Penal Code, and sentenced to three months' rigorous imprisonment. He appealed to the District Magistrate of Balasore who, on the 17th of May, 1900, dismissed his appeal.

[363] Mr. *Swinhoe* (with him *Babu Atulya Charan Bose*) for the petitioner.

The judgment of the Court (PRINSEP and HANDLEY, JJ.) was as follows :—

The petitioner has been convicted of criminal breach of trust. He was employed by the complainant and others to take their paddy for sale and he sold that paddy to a Marwari. The complainant states that the

\* Criminal Revision No. 428 of 1900, made against the order passed by M. Smither, Esq., District Magistrate of Balasore, dated 17th of May 1900 affirming the order passed by Babu N. N. Ghose, Deputy Magistrate of Balasore, dated the 5th of May 1900.

accused has withheld from him a portion of the money due from the sale of his paddy. There is a dispute between the parties as to the number of bags that were given to the complainant by the accused, and the defence is that some of the bags, for which the price is claimed by the complainant, were bags given to the accused by one Naloo. Naloo has been examined as a witness for the defence and he has been disbelieved both by the Magistrate and the Sessions Judge. Nevertheless the fact remains that Naloo claims some of these bags and that, with such a claim against him, it would have been dangerous for the accused to part with the money. Still we have before us the fact found by the Magistrate and accepted by the District Magistrate in appeal, that the claim by Naloo is a false claim. It may be so, but we have also this fact, which is stated by the District Magistrate in his judgment on appeal, that Naloo has during the trial of this case brought a suit against the accused to recover this sum of money. This seems to us to be a complete answer to the charge and to meet the findings of the Courts, that the claim made by Naloo was a false claim. It may turn out to be a false claim on the decision of the suit, and in that case the plaintiff will recover his money, but under the circumstances we think that the accused should not have been convicted of criminal breach of trust, on refusing to give the complainant money, which is claimed by another person as well as by the complainant, and which he denies is due to the complainant. The conviction and sentence are therefore set aside and the Rule is made absolute.

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*Rule made absolute.*

28 C. 364

[364] APPELLATE CIVIL.

*Before Mr. Justice Rampini and Mr. Justice Gupta.*

SHEOBARAT SINGH AND OTHERS (*Plaintiffs*) v. NAWRANGDEO NARAIN SINGH (*Defendant*).<sup>\*</sup> [24th April, 1901.]

*Bengal Tenancy Act (VIII of 1885), s. 121, s. 122 and s. 140—Application for distraint permissible for arrears of rent and interest, but not for damages—Separate application for each holding—Wrongful distraint—Compensation—Principles of computation.*

Under s. 121 and s. 122 of the Bengal Tenancy Act (VIII of 1885) a landlord can apply for distraint, for the purpose of recovering the arrear of rent of the holding due for the preceding agricultural year, together with interest thereon at the rate of 12 per cent. per annum, but not for the recovery of damages, nor can he by one application apply for distraint for the rent of more than one holding.

Principles, on which compensation for wrongful distraint in a suit instituted under s. 140 of the Bengal Tenancy Act should be computed, discussed.

THE defendant, the landlord of the plaintiffs, applied to the Munsif at Gaya under the provisions of s. 121 of the Bengal Tenancy Act requesting the Court to recover by distraint on the crops of the plaintiffs' holdings the arrear of rent due, claiming (1) a sum of Rs. 994-6-6 as the value of the landlord's share of the crops, the landlord asserting that the lands were held on the *bhaoli* (rent payable in kind) system; (2) a sum of

<sup>\*</sup> Appeals from Appellate Decree, Nos. 233 and 819 of 1899, against the decree of H. Holmwood, Esq., District Judge of Gaya, dated the 17th of December 1898, reversing the decree of Moulvie Abdul Bary, Munsif of Gaya, dated the 19th of August 1898.