

Babu *Dwarka Nath Mitter* for the petitioner. In order to convict my client under s. 506 of the Penal Code, it is necessary to find that he threatened the complainant with injury to his person, reputation or property. The word "injury" is defined by s. 44 of the Penal Code and denotes any harm illegally caused. Here the threat has been to cause harm by institution of cases, which could not be said to be a threat to cause harm, illegally but a threat to cause harm through the intervention of the Courts of Justice: *Reg. v. Moroba Bhaskarji* (1).

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30 C. 418=7
C. W. N. 116.

STEVENS AND HENDERSON, J.J. The petitioner has been convicted under section 506 of the Indian Penal Code of the offence of criminal intimidation towards the complainant.

This Rule was granted to show cause why the conviction should not be set aside, on the ground that on the face of the judgment there was reason to doubt whether the conviction was warranted by law.

Briefly stated, the facts appear to be as follows:—The petitioner and another desired the complainant, who is found to have been at one time a person of bad livelihood, to sell them a cow, and, on his refusing to do so, they said that they would ruin him with cases. The threat was afterwards followed by a report and a petition to the Magistrate against the complainant charging him with bad livelihood. The report and the petition were not made by the present petitioner himself; but they have been connected by the Magistrate who tried this case with the threats in respect of which the petitioner has been convicted.

It seems to us that the Rule must be made absolute. According to the definition of criminal intimidation in section 503 of the Indian Penal Code there must be a threat to another person of injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested. The word "injury" is defined again in section 44 as denoting any harm whatever illegally caused to any person in body, mind, reputation or property. No doubt if the threat had been to ruin [420] the complainant by *false* cases, the offence of criminal intimidation would have been committed; but the threat was to ruin him by "cases," and it cannot be assumed that by "cases," were meant false cases. If the cases were not false, the mere fact that they were instituted for the purpose of persecuting the complainant would not bring them within the definition of the term "injury," because the harm, although caused from an improper motive, would not be caused illegally.

The Rule is therefore made absolute, the conviction and sentence are set aside, and the fine, if paid, must be refunded.

Rule made absolute.

30 C. 421 (=7 C. W. N. 27).

[421] CRIMINAL REVISION.

CHUNDR A COOMAR BISWAS v. CALCUTTA CORPORATION.*

[30th April, 1902].

Calcutta Municipal Act (Bengal III of 1899) ss. 502, 505—Human food, destruction of articles for—Purchase of damaged rice intending to sell it as food for pigs—Order for its destruction—Circumstances necessary to justify such order.

In order to justify an order under s. 505 of the Calcutta Municipal Act of 1899, the Magistrate must be satisfied, and there must be a finding in his

* Criminal Revision No. 240 of 1902.

(1) (1871) 8 Bom. H. C. R. (C. C.) 101.

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judgment that the article directed to be destroyed comes within s. 502 of the Act, and is either exposed or hawked about for sale, or deposited in or brought to, any place for the purpose of sale or preparation for sale, and is intended for human food.

Where certain damaged rice which had been purchased by a person who intended to sell it as food for pigs, was ordered to be destroyed by a Magistrate under s. 505 of the Calcutta Municipal Act, and the judgment, of the Magistrate contained no finding that the rice was brought for the purpose of sale or that it was intended for human food, but contained a finding that there always was a risk that it might be sold for human consumption to poorer classes, or might be used in a flour mill worked by unscrupulous persons:

Held, that the fact this danger existed did not justify the order, and that until some attempt was made to sell the rice for consumption by the poorer classes, the Corporation was not justified in destroying the property of a man who was disposing of it in a way which was perfectly legitimate.

[Ref. 43 I. C. 796=4 Pat. L. W. 62=19 Cr. L. J. 220.]

In this case the petitioner, Chundra Coomār Biswas, bought on the 27th February 1902, at an auction held at the Kidderpore Docks, 5,000 maunds of rice which had caught fire and had been soaked with water while on board a ship. The petitioner intended to sell the rice to owners of piggeries, and had contracted with the owner of a large piggery at Tangra to sell him about 4,000 maunds. The petitioner took a small quantity of the rice away to dry and left the remainder in the Docks.

On the 1st March 1902, a sample of this rice was taken, and an order was made by the Magistrate prohibiting the petitioner from dealing with it, and proceedings were instituted by the Calcutta Corporation against the petitioner, under the Calcutta Municipal Act of 1899, and on the 3rd March the Magistrate made an order under s. 505 of the Act for the destruction of the said rice.

[422] Mr. P. L. Roy (Babu Debendra Chandra Mullick with him) for the petitioner. The rice was not intended for human consumption, nor was it hawked about or exposed for sale within the meaning of s. 502 of the Act. It is only when food is intended for sale to human beings that the Chairman is empowered to deal with it in the manner specified in ss. 502 to 504. In the present case the rice was sold to a piggery owner as food for pigs, and there is no finding to the contrary by the Municipal Magistrate. The Magistrate is in error in holding that the Chairman of the Corporation is entitled to seize and destroy everything which he considers to be unwholesome, irrespective of the uses for which they are intended. There is no such provision in the Act. The order made by the Magistrate under s. 505 of the Act was wholly without jurisdiction, as it proceeded upon the erroneous assumption that he was empowered to deal with private property in the way he did, without considering whether it was intended for human food. He should have satisfied himself that the article in question came within the purview of s. 502 in the first place, and it was also necessary for him to find that it was exposed for sale. The Lower Court has not found these facts, and upon the facts proved, or otherwise established in evidence, no such finding could have been arrived at. The *onus* of proving these facts is upon the prosecution, as in a criminal case. The order of the Magistrate amounts practically to a forfeiture of private property without any justification in law.

Mr. Zorab (Babu Dwarka Nath Chakravarti with him) *contra*. The *onus* is upon the defence to show that the article was not intended for

human food. The plea of the accused that the rice was intended for pigs is untrue and has not been established. The main object of these sections in the Municipal Act was to entrust the Chairman with large discretionary powers to deal with all unwholesome articles, in the interests of public health and safety. There is no question that the rice in the present case was extremely unwholesome and unfit for human food.

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STEVENS AND HARRINGTON, JJ. We think that the Rule issued on the Municipal Magistrate and the Chairman of the Corporation of Calcutta to show cause why the order made by the [423] former on the 3rd March last, directing that a certain quantity of rice be destroyed, should not be set aside, must be made absolute.

The facts of the case are that a man named Chundra Coomar Biswas purchased some damaged rice over the side of a ship. A fire had broken out on board the ship and a part of the cargo, which consisted of rice, had been damaged by both fire and water. This was sold over the ship's side for what it would fetch, and was purchased by the petitioner. Out of the 5,000 maunds which he purchased, he took a small quantity away to dry, and left the remainder in the Kidderpore Docks. On the 1st March (the sale having taken place on the 27th February), a sample of this rice was taken, and an order was made by the Magistrate prohibiting the petitioner from dealing with the rice. Subsequently, the case was tried before the Magistrate under the Calcutta Municipal Act of 1899, and under the provisions of s. 505 of that Act the Magistrate made an order for the destruction of the rice in question, and that is the order which the petitioner now seeks to set aside.

In order to justify an order under s. 505 the Magistrate has to be satisfied that the article directed to be destroyed comes within the provisions of s. 502 of the Municipal Act. He is to be satisfied that the article is either exposed or hawked about for sale or deposited in or brought to any place for the purpose of sale or of preparation for sale and is intended for human food. We think that it is, to say the least of it, extremely doubtful on the facts of this case whether the Magistrate could have held that the rice in question was deposited in or brought to any place for the purpose of sale or of preparation for sale, and was intended for human food. The learned Counsel who has appeared to show cause against the Rule falls back on the latter part of the section, and argues that the *onus* of showing that the article was not deposited or brought for any such purpose, or was not intended for human food, is placed upon the party charged, and that the Magistrate was justified in coming to the conclusion that this rice was so brought and intended for sale for human food. But the evidence on the record is that the petitioner stated that the rice was intended for sale as food for pigs, and he proved that he had entered into a contract with the owner of a large [424] piggery for the sale of the rice in question to him. In our opinion, even assuming that the contentions of the learned Counsel were correct, and that the Magistrate could have found on the evidence that the case fell under s. 502, this evidence is amply sufficient to discharge any *onus* which may have rested on the shoulders of the party charged.

The contract in question was made on the 2nd March. It is argued that that is a circumstance which indicates that it was made for the purpose of manufacturing evidence. In our view it is equally open to the construction that it indicates the *bona fides* of the petitioner in

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making an arrangement to get rid of the rice for a perfectly legitimate purpose at the earliest possible opportunity. As the case stands, there is no evidence that this rice was ever intended for human consumption. There is evidence and evidence which appears to us to be satisfactory that it was intended for the consumption of pigs.

There is a further difficulty which stands in the way of the Magistrate's order, and that is that his judgment contains no finding that the rice was brought for the purpose of sale, or that it was intended for human food. Before he could have made the order that he has made, he would have been obliged to find these facts affirmatively. He does not find them, and he does not, as far as can be ascertained from the judgment, disbelieve the case set up on behalf of the petitioner. His finding is that there is always a risk, that is to say, the rice may be sold for human consumption to poorer classes, or may be used in a flour mill worked by unscrupulous persons. The fact that this danger exists does not justify the order which has been made. If any attempt is made to sell this rice for consumption by the poorer classes, then it would be the duty of the Corporation to step in and stop such a sale. But until some such attempt is made the Corporation, in our opinion, is not justified in destroying the property of a man who is disposing of that property in a way which is perfectly legitimate.

The result, therefore, is that we make the rule absolute, setting aside the order of the Municipal Magistrate dated the 3rd March last.

Rule made absolute.

30 C. 425.

[425] CIVIL RULE.

ABDUL RAHAMAN v. MATIYAR RAHAMAN.* [5th December, 1902.]

Deposit in Court—Civil Procedure Code (Act XIV of 1882) s. 310A—Sale in execution of decree—Co-sharer, deposit by

A person claiming under the Mahomedan law a share in some immoveable property which has been sold in execution of a decree against his co-sharers, cannot come in and make a deposit under s. 310A of the Civil Procedure Code.

Ramchandra v. Rahmabat (1), Paresh Nath Singha v. Nabogopal Chattopadhyaya (2) referred to. Srinivasa Ayyangar v. Ayyathorai Pillai (3) distinguished.

[Ref. 13 M. L. T. 123=24 M. L. J. 205=1913 M. W. N. 101=18 I. C. 579.]

RULE granted to Abdul Rahaman, the auction-purchaser.

This Rule arose out of an application by one Matiyar Rahaman for setting aside a sale under s. 310A of the Civil Procedure Code. It appeared, that one Abdul Ali obtained a decree for money against one Wahid Ali and Mobarakjan Bibi, and in execution of that decree held certain immoveable property belonging to them. This property originally belonged to one Aman Ali, who sold the said property to his wife, Guran Bibi, by a kabala, dated 21st Sraban 1252. In 1259 both Aman Ali and Guran Bibi died. Guran Bibi left two sons, Wahed Ali and Waridulla, a daughter, Mobarakjan, and a mother, Nisa Bibi. Nisa Bibi, who inherited a share of the daughter's property, died leaving the applicant and his brothers and a sister as her heirs. The

* Civil Rule No. 2856 of 1902.

(1) (1098) I. L. R. 23 Bom. 450.
(2) (1901) I. L. R. 29 Cal. 1.

(3) (1897) I. L. R. 21 Mad. 416.