1902
JUNE 18.

CRIMINAL
REVISION.

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[285] CRIMINAL REVISION.

KAILAS KURMI *v.* EMPEROR.* [18th June, 1902.]

Public servant—Obstruction—Distraint—Crops—Sanction—Unlawful assembly—Bengal Tenancy Act (VIII of 1885) ss. 123 and 126—Criminal Procedure Code (Act V of 1898) ss. 4 and 195—Penal Code (Act XLV of 1860) ss. 143 and 186.

A peon was ordered by the Civil Court under the provisions of the Bengal Tenancy Act to cut certain crops, which had already been distrained. The peon with some labourers cut a portion of the crops, when they were forcibly stopped by the petitioners and a mob of men. The peon lodged information of the occurrence at the thanah.

The petitioners were convicted under ss. 143 and 186 of the Penal Code.

Held that, as there was in this case no complaint as defined by s. 4 of the Criminal Procedure Code of the public servant concerned, the conviction under s. 186 of the Penal Code should be set aside.

[Ref. 8 C. W. N. 17=30 Cal. 910 (F. B.).]

RULE granted to the petitioners Kailas Kurmi and others.

This was a Rule calling on the District Magistrate of Shahabad to show cause why the convictions and sentences of the petitioners should not be set aside on the grounds (1) that the prosecution for an offence under s. 186 of the Penal Code had no previous sanction, and was not on the complaint of the public servant concerned within s. 195 of the Code of Criminal Procedure; (2) that no order authorizing the peon to cut the crops had been produced or proved in the case ; (3) that separate sentences should not have been passed.

In this case the complainant, Ramdhone Singh, a ticca peon in the Court of the Munsif of Arrah, was deputed by the Munsif to distrain certain crops belonging to one Chatursal Mahto in village Kokila under s. 123 of the Bengal Tenancy Act. In the beginning of January 1902 the peon reported that a field of sugarcane, which had been distrained, was fit for cutting, and on the strength of that report the following order was passed on the 3rd January by the Munsif :—" Peons are allowed to thresh, etc., the crops distrained."

[286] On the 30th January the peon with a number of labourers commenced cutting the sugarcane, and the work progressed without disturbance, for two days, but on the 2nd February the petitioner, Kailas Kurmi, the son of Chatursal Mahto, came to the field followed by a body of men, who carried *lathies* and shouted *maro*. Kailas snatched a *kodali* from one of the labourers, whereupon the rest ran away, and the peon was prevented from further cutting the sugarcane. Subsequently the mob was dispersed by a constable and other civil court peons. The peon Ramdhone Singh then went and lodged information of the occurrence at the thanah.

The petitioners were convicted on the 19th March 1902 under ss. 143 and 186 of the Penal Code, and were sentenced each to rigorous imprisonment for one month under each section. They appealed, but their appeal was dismissed by the Sessions Judge of Arrah on the 1st April, 1902.

Mr. *D. Swinhoe* (Babu *Surendra Nath Ghosal* with him) for the petitioners. The conviction under s. 186 of the Penal Code cannot

* Criminal Revision No. 361 of 1902 against the order passed by H. R. H. Coxe, Sessions Judge of Shahabad, dated April 1st, 1902.

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stand. Under s. 195 of the Criminal Procedure Code no Court can take cognizance of an offence under s. 186 except with the previous sanction or on the complaint of the public servant concerned or of some public servant, to whom he is subordinate. Complaint is defined by s. 4, cl. (*h*) of the Criminal Procedure Code. In this case there was no such complaint. There was no allegation made to a Magistrate by the peon: he only lodged information at the thanah, but that does not amount to a complaint within the terms of s. 4. The peon reported the occurrence to the Civil Court, but no sanction was given by it for this prosecution. The conviction under s. 143 of the Penal Code should also be set aside. It is alleged that we came in a body and stopped the peon from cutting the sugarcane. The peon had no right to cut the crop, unless he was authorised to do so. It is alleged by the prosecution that he was acting under the orders of the Civil Court, but no such order has been produced or put in evidence in the case, so that there is nothing before the Court to show that the peon was acting under any authority, and, until that is done, how can it be said that we were not justified in [287] preventing the peon from doing that which he had no right of his own motion to do.

HARINGTON AND BRETT, JJ. In this case a Rule was issued calling upon the District Magistrate to show cause why the conviction and sentence should not be set aside or altered or such other order passed as to this Court might seem fit—*first*, on the ground that the prosecution for the offence under section 186 had no previous sanction and was not on the complaint of the public servant concerned within section 195, and, *secondly*, that no order authorizing the peon to cut the crops had been produced or proved in the case, and, *thirdly*, that separate sentences should not have been passed.

In our opinion the Rule must be made absolute on the first ground. "Complaint" is defined by section 4 of the Code of Criminal Procedure, and it is clear that there was in this case no complaint of a public servant taking "complaint" as defined in the Code of Criminal Procedure. The objection to the conviction therefore is good. The point was duly raised in the Lower Courts and decided against the petitioner, and in our opinion was decided wrongly, and the Rule must be made absolute on that ground.

As to the other point, the conviction under section 143 is questioned on the ground that the authority of the peon was not properly proved in the case, and this rests on a somewhat different footing. It does not appear to us that this point was taken in the Courts below; but having regard to the circumstances of the case, and the fact that these persons were sentenced to one month's imprisonment, out of which they have been imprisoned from 19th March to 14th April, we think we may with propriety reduce the sentence passed in respect of this offence to that which the petitioners have already undergone.

The result is that the Rule as regards the conviction under section 186 is made absolute and the sentence passed on the petitioners under that section is set aside. With respect to the conviction under section 143, the Rule is made absolute by reducing the sentence of imprisonment to that, which has already been suffered by the petitioners.

Rule made absolute.