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[22] APPELLATE CRIMINAL.

Before Mr. Justice Pratt and Mr. Justice Handley,

BIRENDRA LAL BHADURI v. EMPEROR.*

[21st and 24th June, 1904].

Charge, addition to or alteration of—Indictment, subject-matter of—Cheating—
 "Property"—Money—Criminal Procedure Code (Act V of 1898), ss. 226, 227—
 Penal Code (Act XLV of 1860) s. 420.

The Sessions Court is not a Court of original jurisdiction, and though vested with large powers for amending and adding to charges, can only do so with reference to the immediate subject of the prosecution and committal, and not with regard to matter not covered by the indictment.

The accused was put upon his trial before the Sessions Court on charges under ss. 471 and ⁴¹⁷/₅₁₁ of the Penal Code. Upon motion to the High Court it was held that a previous acquittal covered the charge under s. 471, and that the accused could be tried only under s. ⁴¹⁷/₅₁₁. When the case came to trial the Sessions Judge amended the charge to one under s. ⁴²⁰/₅₁₁ :—

Held, that the Judge had full power under the law to amend the charge, and that the High Court did not intend to fetter his discretion.

The word "property" in s. 420 of the Penal Code includes money.

[Fol. 11 Cr. L. J. 131=4 I. C. 993; 1920 M. W. N. 149=54 I. C. 409.]

APPEAL by Birendra Lal Bhaduri.

In this case the appellant agreed to sell to one Drobomayi Debi, the mother of one Peari Mohan Rai, certain lands at Jessore, and it was also agreed that the purchaser should grant to the vendor a *putni* lease of the said lands. In pursuance of this agreement, on the 28th January 1902, the appellant executed a *kabala* or deed of sale, and certain sums of money were paid to him, and a considerable sum was paid in respect of a charge which existed on the lands in favour of the Jessore Loan Office. The *kabala* was made over to Hemanta Lal Ghose, a servant of the vendor, by Prosanna Chandra Rai, the Manager of Peari Mohan Rai, for registration: a month later Hemanta Lal Ghose brought back the *kabala* which bore on its back what purported [23] to be a registration stamp and an endorsement by the Sub-Registrar of Godkhali to the effect that it had been registered on the 18th February 1902. On the 1st February 1902 the appellant produced before the Sub Registrar of Godkhali a mortgage-deed by which he purported to mortgage to the said Drobomayi Debi the identical property which he had sold to her under the *kabala*. The mortgage was registered on the 18th February, and an endorsement was subsequently placed on it to the effect that the mortgage-money was paid off: this endorsement purported to be signed by the son of the mortgagee. On the 3rd April the appellant applied to the Jessore Loan Office for a loan, and on the 4th April produced before the Secretary of that office the said mortgage-deed in order to show that the incumbrance had been discharged, and to induce the office to grant a loan. The matter however, was not carried through, and no money was advanced.

One Surendra Nath Majumdar, acting on behalf of his employer, Drobomayi Debi, instituted a prosecution against the appellant. It was

* Criminal Appeal No. 503 of 1904, against the order of J. A. Ezechiel, Sessions Judge of Jessore, dated April 7, 1904.

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alleged by the prosecution that the *kabala* had never been registered, and that the endorsement on it was a forgery; it was also alleged that the mortgage-deed was a forgery, and that in fact no mortgage transaction had ever taken place. The appellant was committed by the Deputy Magistrate of Jessore to the Sessions Court for trial under ss. 467 and 471 of the Penal Code in respect of the mortgage-deed only. In the Sessions Court other charges were added, and the appellant was tried before the Sessions Judge and a jury in one trial on charges under ss. 467, $\frac{467}{109}$ and 468, $\frac{468}{109}$ of the Penal Code with regard to the alleged forgery of the *kabala*; under s. 82 of the Registration Act, and ss. 467, $\frac{467}{109}$ and s. 471 of the Code with regard to the mortgage-deed; and under ss. 471 and $\frac{471}{511}$ of the Code with reference to the attempt to cheat the Loan Office. The jury acquitted the appellant of the charges relating to the forgery of the *kabala*, but convicted him under s. $\frac{467}{109}$ of the Penal Code of forging the mortgage-deed, and also under s. $\frac{417}{511}$ of attempting to cheat the Loan Office, and under s. 471 of dishonestly using the mortgage-deed as genuine before the Sub-Registrar and the Secretary of the Loan Office with the knowledge that it was forged, but they acquitted him of the charge under s. 82 of the Registration Act.

[24] The High Court on appeal set aside the conviction and ordered a retrial* on the ground that there was a misjoinder of charges and that the Sessions Judge's charge to the jury was defective. The appellant was then retried on the charges under ss. 467 and 471 of the Penal Code relating to the mortgage-deed and was acquitted. The appellant was again tried on charges under ss. 471 and $\frac{417}{511}$ of the Code with regard to the using of the same mortgage-deed before the Jessore Loan Office and with attempting to cheat the said office. Upon motion to the High Court it was held that the previous acquittal covered the charge under s. 471, and that the appellant could be tried only under s. $\frac{417}{511}$. When the case came to trial the Sessions Judge amended the charge to one under s. $\frac{420}{511}$ of the Penal Code, and on that charge the appellant was convicted by the jury. Against this conviction the appellant appealed to the High Court.

^aMr. Jackson (Mr. K. N. Chaudhwri, Babu Atulya Charan Bose and Babu Surendra Krishna Dutt with him), for the appellant. The appellant was put upon his trial before the Sessions Court on charges under ss. 471 and $\frac{417}{511}$ of the Penal Code. The High Court was then moved, and held that he could not be tried under s. 471, as that offence was covered by the previous acquittal, but that he could be tried only under s. $\frac{417}{511}$. When however the case again came before the Sessions Court the Judge altered the charge from s. $\frac{417}{511}$ to one under s. $\frac{420}{511}$. This I submit he had no power to do; he could only try the case under s. $\frac{417}{511}$ if at all. Further s. 420 of the Penal Code is inapplicable to the present case, as the word "property" in that section cannot be taken to include money. The prosecution was originally instituted by Surendra Nath Majumdar on behalf of Drobomayi Debi, and the appellant was committed to the Sessions upon

* See I. L. R. 30 Cal. 822.

charges under ss. 468 and 471 with reference to the mortgage-deed: the Sessions Judge therefore had no jurisdiction to charge and try the appellant for attempting to cheat the Jessore Loan Office, as no officer of that company had lodged any complaint with regard to any offence relating to such company.

[25] *The Deputy Legal Remembrancer (Mr. Douglas White)*, for the Crown. Under s. 227 of the Criminal Procedure Code the Sessions Judge has ample power to alter or add to any charge at any time before the verdict of the jury is returned, so that in this case he was quite justified in altering the charge to one under s. $\frac{420}{511}$. The High Court never intended to interfere with his discretion in the matter.

S. 420 of the Penal Code is not limited to any particular kind of property, but includes every kind. Looking to the definition of cheating in s. 415 of the Code, there might be cheating which would only cause damage or harm to the person in mind, body or reputation. In such a case the conviction would be under s. 417 of the Code; but when a person has been cheated out of property the conviction would be under s. 420. The illustrations are all under s. 415; therefore s. 420 must be read with s. 415; and according to the illustrations set forth in s. 415 money is included in property. Illustration (i) of s. 415 is exactly in point.

Cur. adv. vult.

PRATT AND HANDLEY JJ, The appellant has been convicted under section $\frac{420}{511}$ of the Indian Penal Code of an attempt to cheat the Jessore Loan Office and has been sentenced to two years' rigorous imprisonment. Some time in the year 1902, one Surendra Nath Majumdar, acting on behalf of his employer, Drobomayi Debi, instituted a prosecution against the present appellant with reference to an alleged forged endorsement on a deed of sale and a forged mortgage-deed. The Magistrate committed the accused for trial on charges under sections 467 and 471 of the Indian Penal Code relating to those documents. At the Sessions, the charges were amended and several were added including one under section $\frac{417}{511}$. There was a conviction on some of the charges only. The High Court on appeal* set aside the conviction and ordered a retrial on the ground that there was a misjoinder of charges and that the Sessions Judge's charge to the jury was defective. The accused was then retried on the charges relating to the mortgage-deed and was acquitted. [26] Next he was put upon his trial on charges under sections 471 and $\frac{417}{511}$. Upon motion to the High Court it was held that the previous acquittal covered the charge under section 471 and that the accused could be tried only under section $\frac{417}{511}$. When the case came to trial the Sessions Judge amended the charge to one under section $\frac{420}{511}$, and on that charge the accused was convicted by the jury and hence this appeal.

Various grounds of appeal have been urged before us. We think it sufficient to notice only two of them. The first is that the Sessions Judge could not lawfully alter the charge to one under section $\frac{420}{511}$, and that that section is inapplicable. We think that the Sessions Judge had full power under the law to amend the charge and that this Court did not intend to fetter his discretion. We also think that the word "property"

See I. E. R. 180 Cal. 822.

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in section 420 does include money. The second contention is that the Sessions Judge had no jurisdiction to charge and try the accused for attempting to cheat the Jessore Loan Office, as no officer of that company had lodged a complaint of such an offence nor had the Magistrate committed the accused for trial on any such charge. We think this objection must prevail, notwithstanding the remand order of this Court, for the objection was never before raised and dealt with. The prosecution was instituted by a person who had no concern with the Jessore Loan Office and whose complaint related to antecedent events. He could not be heard upon a complaint with which the Loan Office was concerned, but did not offer to prosecute, and the Magistrate did not commit the accused with reference to an offence committed against the Loan Office. The Sessions Court is not a Court of original jurisdiction, and though vested with large powers for amending and adding to charges can only do so with reference to the immediate subject of the prosecution and committal, and not with regard to matter not covered by the indictment. We, therefore, set aside the conviction and sentence and direct that the sureties be discharged.

We desire to add that even if the conviction had been sustainable, the time which the appellant has spent in jail from first to last would in our opinion have been sufficient for the ends of justice.

32 C. 27 (=31 I. A: 176=8 U. W. N. 876=8 Bom. L. R. 754=8 Sar. 688).

[27] PRIVY COUNCIL.

SHYAM KUMARI v. RAMESWAR SINGH.*

[On appeal from the High Court at Fort William in Bengal.]

[24th and 25th February, 7th June and 12th July, 1904.]

Sale for arrears of revenue—Incumbrances—Act XI of 1859 s. 53—Proprietor—"Sale" or "purchase," time of—Defaulting proprietors—Debt assigned to mortgage—Want of diligence in recovering it—Accounts.

The respondent on 17th February 1896 purchased an estate sold in execution of a decree of the Civil Court against the then proprietors. He obtained his sale certificate on 21st March and was put into possession on 29th April 1896. Default occurred on 12th January 1896 in payment of the Government revenue on the estate, which on 25th March 1896 was sold under Act XI of 1859 for arrears of revenue and purchased by the respondent:

Held, that at the time of his purchase at the revenue sale the respondent was a proprietor of the estate within the meaning of s. 53 of Act XI of 1859, and therefore took it subject to the incumbrances existing on it at the time of sale.

Neither the fact that the sale by the Civil Court was subsequent in date to the default for arrears of revenue nor the further circumstance that under the revenue sale certificate the purchase related back beyond the actual date of the sale and took effect from the 12th January 1896, altered the ownership of the estate nor made the respondent any the less a proprietor.

Where "sale" or "purchase" is spoken of in Act XI of 1859 in connection with time, the time meant is that at which the sale actually takes place and not that to which its operation is carried back by relation.

Section 53 of the Act is a proviso to, or qualification of s. 37. There is no implied limitation in s. 53 which restricts its operation to defaulting proprietors.

* *Present*: LORD DAVEY, LORD ROBERTSON and SIR ARTHUR WILSON.