1900

PARSI HAJRA v. BANDHI DHANUK.

ordered, if the Magistrate is satisfied that the accusatiou was frivolous and vexatious. From the nature of the offence charged the accusation certainly cannot be regarded as frivolous. The Magistrate finds that "the case is false and must have been vexatious to the accused in the extreme."

That may be said of every false case. But s. 250 of the Code of Criminal Procedure does not contemplate that compensation shall be awarded, because the case is found to be false. If it had been so intended by the Legislature the law would have been so expressed. Section 211 of the Penal Code on the other hand expressly makes the instituting of a false case with the intent to injure an accused and with knowledge that there is no just or lawful ground for the accusation, an offence and the finding of the Magistrate is that such offence has been committed. The Magistrate has consequently in a summary proceeding convicted the complainant of that offence without a proper trial which obviously is altogether improper and open to serious objection. The words "frivolous" and "vexatious" in s. 250 indicate an accusation merely for the purposes of annoyance, not an accusation of an offence which is absolutely false. The order for compensation must therefore be set aside, and the money, if paid, must be refunded. It is open to the Magistrate either to institute proceedings as regards an offence under s. 211 of the Penal Code or to sanction under section 195 of the Code of Criminal Procedure an application by one of the accused persons to make a complaint of that offence.

D. S.

CRIMINAL REVISION.

Before Mr. Justice Pratt and Mr. Justice Brett.

DEO SAHAY LAL AND ANOTHER (PETITIONERS) *v.* QUEEN-EMPRESS (OPPOSITE PARTY.)*

1900
Sept. 21, 25.

Arrest—Cognizable offence—Escape from lawful custody—"For any such offence" meaning of—Code of Criminal Procedure (Act V of 1898), s. 54—Penal Code (Act XLV of 1860), ss. 144 and 224.

* Criminal Revision No. 639 of 1900, made against the order passed by G. W. Place, Esq., Sessions Judge of Patna, dated the 12th of July 1900.

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DEO SAHAY LAL v. QUEEN-EMPRESS.

The words in s. 224 of the Penal Code "for any such offence" mean for any offence with which a person is charged or for which he has been convicted. So that, it would be an offence for a man to escape from custody after he had been lawfully arrested on a charge of having committed an offence, although he may not be convicted of such latter offence.

An accused person is no less guilty than a convicted person, if he escapes from lawful custody. In the present case the petitioners were arrested by the police under the authority of s. 54 of the Code of Criminal Procedure. That arrest was perfectly lawful, and the subsequent detention was in lawful custody.

Ganga Charan Singh v. *Queen-Empress* (1) distinguished.

IN this case the accused were formally arrested and placed in the custody of a police constable and some chowkidars, while the head-constable went out to investigate the riot case in which it was alleged that the accused were concerned. The constable who was left in charge of the accused anticipated a rescue and sent word to the head-constable, who sent to Bukhtiarpur for help. Meanwhile a large number of persons came with the result that the accused were released. The accused were acquitted on the charge of rioting, but were convicted on the 29th of May 1900 by the Sub-divisional Magistrate of Barh under s. 224 of the Penal Code of having escaped from lawful custody, and sentenced to three months' rigorous imprisonment each, together with a fine each of Rs. 100. The accused appealed to the Sessions Judge of Patna who on the 12th of July 1900 dismissed their appeal.

Mr. *Donogh* (with him Babu *Debendra Chunder Mullick*), for the petitioners.

The *Deputy Legal Remembrancer* (Mr. *Gordon Leith*), for the Crown.

Cur. adv. vult.

1900, SEPTEMBER 25. The judgment of the Court (PRATT and BRETT, JJ.) was delivered by—

PRATT, J.—The petitioners were accused of offences under ss. 144 and 379 of the Penal Code. The Sub-Inspector went out to investigate the matter and arrested the petitioners on those charges. Subsequently they escaped from the custody of the police. They were acquitted on the charge of rioting, but were convicted under

(1) (1893) I. L. R., 21 Calc., 337.

s. 224 of the Penal Code, and sentenced each to 3 months' rigorous imprisonment and to pay a fine of Rs. 100.

Mr. Donogh, who appears for the petitioners, contends that as they were acquitted of rioting they were not in lawful custody, and that the conviction under s. 224 is, therefore, not sustainable. He refers for an authority to the case of *Ganga Charan Singh* v. *Queen-Empress* (1). S. 224 of the Penal Code is as follows: "Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence shall be punished, &c." Having regard to the context, we think that the words "for any such offence" must mean "for any offence with which he is charged or of which he has been convicted." So that it would be an offence for a man to escape from custody after he had been lawfully arrested on a charge of having committed an offence, although he may not be convicted of such latter offence. An accused person is no less guilty than a convicted person, if he escapes from lawful custody. In the present case the petitioners were arrested by the police under the authority of s. 54, Criminal Procedure Code. That arrest was perfectly lawful and the subsequent detention was in lawful custody.

In the case relied on by the learned counsel for the petitioners, a person bearing the same name as the accused, but who was not the actual person accused, was arrested by mistake. Whilst under arrest he escaped from custody. It was held that he was not lawfully detained in custody, and could not therefore be rightly convicted under s. 224. That case is clearly distinguishable from the present one, because there the arrest itself was unlawful and might indeed have been made the ground of an action for damages. Here the police Sub-Inspector was authorized by law to arrest the petitioners who were accused of a cognizable offence.

Although we think the conviction must be sustained, yet we consider that the fact of the petitioners being pronounced not guilty of the charge on which they were arrested, should justly

(1) (1893) I. L. R., 21 Calc., 387.

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plead in mitigation of sentence. The petitioners have already undergone more than one month's rigorous imprisonment. We direct that their sentences of imprisonment be reduced to the terms now actually undergone and that the fines be remitted and, if paid, be refunded.

D. S.

APPELLATE CIVIL.

Before Mr. Justice Banerjee and Mr. Justice Brett.

1900
Dec. 12.

KHANKAR ABDUR RAHMAN (DEFENDANT No. 2) *v.* ALI HAFEZ AND OTHERS (PLAINTIFFS).*

Evidence Act (I of 1872), s. 92—Conduct of parties—Oral evidence when admissible to prove that a conveyance is a mortgage by way of conditional sale—Admissibility of parol evidence to vary a written contract.

Under the provisions of s. 92 of the Evidence Act (I of 1872) oral evidence of the acts and conduct of parties, such as evidence of the repayment of the money, the return of the deed and the exercise of the acts of possession by the vendor, is admissible to show that a certain conveyance was really a mortgage by way of conditional sale.

Preonath Shaha v. *Madhu Sudan Bhuiya* (1) referred to.

The case of *Balkishen Das* v. *Legge* (2) did not in any way affect the rule laid down in the case of *Preonath Shaha* v. *Madhu Sudan Bhuiya* (1).

Nothing in s. 86 of the Bengal Tenancy Act requires the surrender of a ryot's occupancy right to be in writing.

THIS appeal arose out of an action brought by the plaintiffs to recover possession of certain immoveable property on establishment of title thereto. The land in dispute originally formed part of a tenure measuring 107 bighas held by one Khankar Abdur Rahman and his brother Lutfar Rahman. Abdur Rahman (defendant No. 2) sold his half share of the *jote* to one Amirunessah whose heirs sold the land in dispute in 1277 B. S. to one Niamatulla and Azmatulla, and in 1279 B. S. he (Abdur Rahman) took a lease of the said land. Defendant No. 1 in execution of a

* Appeal from Appellate Decree No. 2633 of 1898 against the decree of W. Tewnon, Esquire, District Judge of Murshidabad, dated the 6th of September 1898, affirming the decree of Babu Kapali Prasanna Mukerjee, Munsif of Kandi, dated the 23rd of September 1897.

(1) (1898) I. L. R., 25 Calc., 603.
(2) (1899) L. R., 27 I. A., 58 ; I. L. R., 22 All., 149.