APPELLATE CRIMINAL.

Before Mr. Justice Harington and Mr. Justice Brett.

RATI JHA

v.

EMPEROR.*

1911

Nov. 22.

Using as genuine a forged document—Handing over of a forged rent-receipt by accused, in the course of a criminal trial, to his mukhtear—Examination by the mukhtear of a witness thereon—Receipt filed by the Magistrate with the record though not proved—Grant of sanction to landlord's agent not a party to the criminal case—Sanction by successor of Magistrate before whom the forged document was used—Penal Code (Act XLV of 1860), s. 471—Criminal Procedure Code (Act V of 1898), s. 195.

Where the accused, during the course of a criminal trial against him of rioting and theft of crops, handed over to his mukhtear a forged rent-receipt, bearing a counterfeit seal of the landlord, to prove his possession, and the latter put the same to a witness and questioned to him as to its genuineness, but, on the witness alleging that it was a forgery, the trying Magistrate took it, initialled it and placed it on the record :

Held, that there was a user of the document within s. 471 of the Penal Code.

Ambika Prasad Singh v. *Emperor* (1) distinguished.

A sanction granted to the agent of the landlord whose seal was forged is valid, though neither was a party to the criminal case in which the forged document was used.

A sanction granted by the successor of a Magistrate before whom the forged document was used is good in law.

THE appellant, Rati Jha, originally held a jote of 22 bighas in village Rampore Shambota, under a zamindar named Mahmaya Pershad Singh, a portion

* Criminal Appeal No. 579 of 1911, against the order passed by W. H. Vincent, Sessions Judge of Mozaffarpore, dated May 10, 1911.

(1) (1908) I. L. R. 35 Calc. 820.

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of which was mortgaged to one Raj Kishwar Narain. Subsequently the jote was sold in execution of a rent decree against the appellant and purchased by Kishendari Pershad. Raj Kishwar then bought the land mortgaged to him from Kishendari and grew paddy on it. In December 1909 Rati Jha and others were alleged to have gone in a body and cut the crops. Rati was thereupon put on trial under sections 147 and 379 of Penal Code before Mr. Davidson, Deputy Magistrate of Mozaffarpore. In support of his defence that he was still in possession, the purchase by Kishendari being according to his case, *benami* for himself, he produced a rent-receipt purporting to be signed by the landlord and gave it to his mukhtear, who then put it to a witness and asked him whether it was not a receipt granted by the zamindar in favour of the appellant. The witness denied its genuineness, whereupon the trying Magistrate took the document, initialled it and filed it on the record. The rent-receipt bore a counterfeit seal of the zamindar. Sanction to prosecute the appellant under section 471 of the Penal Code was applied for by the latter's agent to, and granted by, Mr. Davidson's successor. The appellant was ultimately committed under the above section and tried by the Sessions Judge of Mozaffarpore sitting with Assessors. He was found guilty and sentenced to five years' rigorous imprisonment, and now appealed to the High Court against the conviction and sentence.

Babu Gour Chunder Pal, for the appellant. The grant of sanction to the landlord's agent, who was not a party to the criminal case, is bad in law: *In the matter of Chandra Kant Ghose* (1). Sanction ought to have been accorded by Mr. Davidson who heard the evidence in the original case. The evidence in the

(1) (1888) 3 C. W. N. 3.

present case does not establish that the document was forged. Next, the facts do not constitute user within section 471 of the Penal Code. The rent-receipt was not given in evidence: see *Ambika Prasad Singh* v. *Emperor*(1). Finally, the sentence is too severe.

Mr. Sultan Ahmed, for the Crown. Sanction was granted to the person whose seal was counterfeited and was, therefore, legal: *Queen-Empress* v. *Subbaraya Pillai* (2); *In re Ram Prasad Malla* (3). Sanction granted by the successor of the Judge or Magistrate before whom the offence was committed is perfectly legal: *Bahadur* v. *Eradatullah Mallick*(4). There is ample evidence of forgery. The rent-receipt was used within section 471 of the Penal Code: see *In re Ramappa Hebbara*(5). The case of *Ambika Prasad Singh* v. *Emperor* (1) is distinguishable.

Cur. adv. vult.

HARINGTON AND BRETT JJ. The appellant in this case was convicted of an offence under section 471 of the Indian Penal Code and sentenced to five years' rigorous imprisonment. The document on which the charge of using a forged document was founded was a receipt for rent, and the occasion on which the appellant used it was at a trial in which he was one of the accused on a charge of rioting. The land in respect of which the riot took place was a piece of land of which he wished to take possession, and, in the course of the hearing of the criminal case against him, the receipt for rent in question was produced by him and handed to his mukhtear, who then handed it to a witness who was asked whether it was a receipt for

(1) (1908) I. L. R. 35 Calc. 820.
(2) (1895) I. L. R. 18 Mad. 487.
(3) (1909) I. L. R. 37 Calc. 13.
(4) (1910) I L. R. 37 Calc. 642.
(5) (1890) 1 Weir 550.

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rent granted by the landlord in favour of the present appellant, who was then one of the accused at the trial. The witness said it was not genuine; but notwithstanding that statement the document was initialled by the Magistrate who was trying the case, and was filed as one of the documents produced on behalf of the accused. On these facts the appellant was convicted, as has been stated, under section 471 of the Indian Penal Code.

The learned vakil, who appeared on behalf of the appellant in this Court, took four points on behalf of his client: (i) that the trial was bad because the sanction on which it was held was invalid; (ii) that there was nothing to show that the receipt was a forgery; (iii) that the receipt was not *used* within the meaning of the Code; and (iv) that the sentence was too severe.

With regard to the first point, the sanction was granted to the agent of the landlord whose seal was alleged to have been counterfeited on the rent-receipt. The learned vakil argued that the sanction ought to have been granted to a person who was one of the parties to the case in which the receipt was produced, namely, the rioting case. That contention finds no support from any of the provisions of the Code of Criminal Procedure, and we do not agree with it. It appears to us that the landlord, whose seal had been counterfeited, was perfectly entitled to authorize his agent to obtain sanction to prosecute, and to prosecute in respect of the wrong which was done to him by counterfeiting his seal.

Then it is said that the sanction was invalid on another ground, because it was not granted by Mr. Davidson who heard the rioting case, but by his successor. But it has been decided by the Courts that a sanction is valid if granted by the successor in

office of the Judge or Magistrate before whom the offence was committed. The first point taken, therefore, fails.

The second point taken is that there is nothing to show that the receipt was forged. The evidence as to that fact is that of the zamindar himself who comes into the box and pledges his oath that the seal which appears on the rent-receipt is not the seal used in his office. A specimen of his own seal has been produced and a comparison shows that the seal on the rent-receipt produced by the appellant, though it resembles that used by the landlord, differs from it in some small but material points. Further, the landlord says that the genuine receipts granted in his zamindari were on printed forms and this one was a receipt on plain paper. It is argued by the learned vakil that there was another seal which was in use before 1905, and that that seal was affixed on the rent-receipt in question by a deceased karpardaz of the landlord for the purpose of cheating the appellant. Not only is there no evidence that any such seal ever existed, but it is in evidence that there was no seal at all in the zamindari at that time, because the landlord deposes that there was no seal before 1905 when the present seal was procured; and, further, the contention of the learned vakil is open to this observation that, if any other seal was ever used previous to 1905, it was quite easy for the appellant who was before 1905 a tenant of the land to produce receipts bearing the seal which he alleged was in existence then. But no such receipt was produced and the evidence shows that no such seal ever existed. The karpardaz who is alleged to have granted the receipt is dead, and so could not be called to deny the aspersion made on his character.

The third contention is that the receipt was not *used*. What happened was that the receipt was

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produced by the mukhtear of the accused and handed to a witness and, though that witness did not prove it, it nevertheless went on to the file after being initialled by the trying Magistrate. It appears to us that this constituted a user. The learned vakil cited the case of *Ambika Prasad Singh* v. *Emperor* (1) as an authority for the proposition that the filing of a document is not a user within the meaning of the Act. But the case he cited, when the judgment comes to be looked at, does not support that proposition. That case was one in which the receipts which were alleged to be forged were entered in a list, and it appears from the report that what was filed was this list of the documents, with a statement made on behalf of a third party. The filing of a list of documents is not the same thing as the filing of the documents themselves. There was no filing of the forged document in that case which would bring the accused within the Act. In the present case the document was tendered to the witness, and then it was initialled by the trying Magistrate and placed on the file by him, after having been handed to the mukhtear by the appellant himself for the purpose of being used in the case. In our view, that is a sufficient user, and the conviction under section 471 of the ndian Penal Code is right and cannot be disturbed.

As to the fourth question, we think that the sentence may properly be reduced. The offence is no doubt a serious one, because it is an offence which must have been committed after preparation and not under pressure or sudden impulse. But, on the other hand, it is to be observed that the document was produced in the course of a criminal trial in which the appellant was one of the accused, and the primary intention which he had was to get out of the difficulty

(1) (1908) I. L. R. 35 Calc. 820.

which he had got into in consequence of the riot, and the circumstance that the document was not supported by the production of perjured evidence of its genuineness may be taken into account in mitigation of punishment. On these grounds, we think the sentence may, with propriety, be reduced, and we reduce it from five years' rigorous imprisonment to three years' rigorous imprisonment. Subject to this modification in the sentence, the appeal will be dismissed.

E. H. M. *Appeal dismissed.*

CRIMINAL REVISION.

Before Mr. Justice Holmwood and Mr. Justice Sharfuddin.

BAISNAB CHARAN MAJHI

v.

GATINATH MUNSHI.*

1912

Jan. 18.

Jalkar—Dispute concerning jalkar—Jurisdiction of Magistrate to institute proceedings under s. 145 of the Code after an order binding down one of the parties to keep the peace—Order attaching the subject of dispute on being unable to determine the question of possession—Criminal Procedure Code (Act V of 1898), ss. 107, 145, 146.

The Magistrate has jurisdiction to take proceedings under s. 145 of the Criminal Procedure Code, after an order under s. 107 of the Code binding down one of the parties to keep the peace, when the circumstances so require.

Where there was a reasonable apprehension that several persons, who were interested in the subject of dispute and had absconded at the time of the s. 107 proceeding, might cause a breach of the peace with the first party, who were fishermen, or that the latter might seek to enforce their rights against the second party who had been bound down, in which

* Criminal Revision No. 826 of 1911 against the order of A. L. Gupta, Deputy Magistrate of Magura, dated May 4, 1911.