

1887.
July 17.

REG. V. KHUSHA'L HIRA'MAN and INDRAGÍR.

Leave to Prosecute—Civil Court—Act XXV. of 1861, Secs. 169 and 170—Lease—Copy of Lease—Valuable Security—Ind. Pen. Code, Sec. 30

The prosecutor applied to a Civil Court for leave to prosecute, under Sec. 170 of the Crim. Proc. Code, a witness who had appeared before the Court. The Court granted the permission as applied for.

The prisoner was tried for and convicted of an offence coming under the provisions of Sec. 169 of the Crim. Proc. Code.

Held that the mention of Sec. 170 in the permission to prosecute granted by the Civil Court might be treated as surplusage, and that the prisoner was rightly convicted.

Held also that the copy of a lease is not "a valuable security" within the meaning of Sec. 30 of the Indian Penal Code.

BHOLA'GÍR MANGÍR brought a suit in the Court of the Principal Şadr Amín at Puná against the first prisoner to recover a certain piece of land near the Puná railway station. The first prisoner put in his answer, and stated that Bholágír could not recover the land, as he, the prisoner, held it under a perpetual lease granted to him by Bholágír himself. The alleged document creating the lease was then put in evidence; and Indragír, the second prisoner, gave evidence in support of its genuineness. Bholágír thereupon petitioned the Principal Şadr Amín for leave to prosecute the first prisoner, under the provisions of Sec. 170 of the Criminal Procedure Code; and in a postscript added that Indragír had given false evidence, and sought to prosecute him also. On the back of the petition the Principal Şadr Amín wrote that the permission was granted as sought for.

Thereupon the first prisoner was charged before E. T. Richardson, Magistrate F. P., with the offence "of using as genuine a document which he knew to be forged," under Sec. 471 of the Indian Penal Code; and the second prisoner was charged, under Sec. 109, with abetting that offence; and both were committed upon these charges to the Court of Sessions.

A. C. Watt, Acting Assistant Session Judge at Puná, tried the prisoners; and having amended the charge under

the provisions of Sec. 244 of the Criminal Procedure Code by adding, as against the second prisoner, the offence of giving false evidence; and, as against both, the offences of fabricating false evidence and of corruptly using fabricated evidence under Secs. 193 and 196 of the Penal Code, convicted them of the same. The first prisoner was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 5,000, and in default of payment to suffer further rigorous imprisonment for six months; and the second prisoner to suffer rigorous imprisonment for eighteen months and to pay a fine of Rs. 500, and in default of payment to suffer further rigorous imprisonment for six months.

The appeal was argued before COUCH, C.J., and NEWTON, J.

Marriott (with him Vishvanáth N. Mandlik), for the prisoners, argued that as the document forged was a valuable security, and as the punishment for that offence, under Sec. 467 of the Indian Penal Code, was transportation for life, the case ought properly to have been tried before a jury, under the notification in the *Government Gazette*; and that, that not having been done in this case, the proceedings ought to be quashed.

Dhirajál Mathurádás (Government Pleader), for the prosecution, contended that the document in question was not a valuable security, as it was apparently a copy of a lease.

[COUCH, C. J. :—The document is a mere copy, and so it does not come under the term valuable security as defined in Sec. 30 of the Indian Penal Code.]

For the prisoners it was then argued that no proper sanction was given as required by law; the prosecution asked sanction to prosecute under Sec. 170 of the Criminal Procedure Code, which refers to Secs. 463, 471, 475, and 476 of the Penal Code, and does not refer to any of the sections under which the prisoners were convicted. The sanction ought to have been applied for and given under Sec. 169 of the Criminal Procedure Code; and hence no sanction as required by law had been given in this case. Besides this, the evidence against the prisoners was very doubtful, and for these reasons the sentence ought to be set aside.

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COUCH, C.J. :—We think the sanction given by the Principal Sadr A'min ought not to be limited by the mention of Sec. 170 in the application; we should rather treat the mention of the section as mere surplusage. Then as far as the evidence against the first prisoner is concerned, his guilt is proved beyond doubt. But with regard to the second prisoner, I think there is some doubt, though the case looks very suspicious, and that, under the circumstances, we should reverse the sentence against him, and reject the petition of the first prisoner.

Petition of prisoner No. 1 rejected; and conviction and sentence against prisoner No. 2 reversed.

July 24.

REG. V. DIPCHAND KHUSHIA'L.

District Magistrate—Magistrate F. P.—Power to Refer—Jurisdiction—Crim. Proc. Code, Sec. 169.

Held that the Magistrate of a District to whom a case has been sent for investigation by a Civil Court has no power to refer it to a Magistrate F. P., and the latter has, therefore, *under such circumstances*, no jurisdiction to take up the case without complaint made to him.

THIS case was referred for the orders of the High Court, by R. H. Pinhey, Session Judge of the Konkan, under the provisions of Sec. 434 of the Criminal Procedure Code.

The facts of the case, and the grounds of submitting it to the High Court, will appear from the following extracts of the Session Judge's judgment recorded in it :—

“On examining the record and proceedings of the F. P. Magistrate, however, I find that his proceedings were illegal *ab initio*. The case was commenced by A'zam Amrit Shripat Nagpurkar, Munsif at Dápoli, on the 25th of March 1867, writing a *yád* or Maráthi letter to Mr. Boswell, Magistrate of the Ratnágirí District, requesting him to have the accused tried for an offence punishable under Sec. 209 of the Indian Penal Code. There would have been nothing wrong in Mr. Boswell commencing proceedings himself against the accused on this *yád* of the Munsif, because Mr. Boswell, as Magis-