

1880
MARCH 23.
APPELLATE
CIVIL.
4 B. 473.

Kumta held the plaintiff entitled to recover the enhanced assessment and local cess, together with the arrears of rent sued for. He made a decree, accordingly, in favour of the plaintiff. The District Judge of Kanara (Mr. A. L. Spens) affirmed it in appeal. The defendant thereupon appealed to the High Court. The appeal was heard by M. Melvill and Finlay, JJ. In the High Court it was contended on behalf of the defendant, that the lower Courts were wrong in holding him liable to pay the enhanced assessment and local cess, and that he was liable for nothing more than the rent payable in kind fixed in the *mul-gaini* lease.

The following is the judgment of the Court delivered on the 15th April 1879:—

JUDGMENT.

MELVILL, J.—The judgment in this case must follow the judgment in second appeal No. 422 of 1878, decided on the 20th February last. Defendant holds the land on a perpetual lease at a fixed rate, and plaintiff can claim no more than he [479] is entitled to under that lease. The fact that Government have increased the assessment for which plaintiff is liable, cannot be allowed to alter the terms of the contract entered into between the parties, albeit plaintiff may have acted improvidently in granting any such lease to the defendant.

The decree of the District Court must be amended, and defendant decreed to pay plaintiff the amount due as rent for the years under the lease No. 24 (*i.e.*, 22½ khandis of rice) which he has all along admitted his liability to pay, and plaintiff must bear all costs in all Courts.

[This case is followed in 4 B. 473 (476).]

4 B. 479.

APPELLATE CRIMINAL.

Before Mr. Justice M. Melvill and Mr. Justice F. D. Melvill.

IMPERATRIX *v.* IRBASAPA.* [29th April, 1880.]

Giving false evidence before a police patel—Sanction—Bombay Act VIII of 1867 (Village Police), s. 13—Indian Penal Code (XLV of 1860), ss. 181, 191 and 193—The Code of Criminal Procedure (X of 1872), ss. 467 and 468.

A person who makes a false statement upon oath before a police patel acting under s. 13 of Bombay Act VIII of 1867 gives false evidence within the meaning of s. 191 of the Indian Penal Code, and is punishable under s. 193; but his trial for that offence requires no sanction, a police patel not being a Criminal Court within the definition of s. 4 of the Code of Criminal Procedure (see s. 463), although offences under Chap. X of the Indian Penal Code committed before the same officer cannot be tried without a sanction. (See s. 467 of the Code of Criminal Procedure).

THIS was a reference by A. C. Watt, Acting Judge of Dharwar, under s. 296 of the Code of Criminal Procedure.

The material circumstances of the case are as follows:—

During an investigation by a police patel, held under s. 13 of the Village Police Act, Bombay (VIII of 1867), one Irbasapa was examined as a witness, and his evidence was recorded by the patel, on solemn affirmation on behalf of the complainant, who had accused four persons of having voluntarily caused hurt to him. The evidence was forwarded, in due course, to the Subordinate Magistrate who tried the case. At the trial, Irbasapa having made a statement contradictory of that which he had made before the police patel, the Magistrate discharged the [480] accused persons, and sanctioned the prosecution of Irbasapa for giving false evidence either before the police patel or before himself.

Irbasapa was, accordingly, tried by Mr. Hughes, Magistrate (First Class), and sentenced to rigorous imprisonment for six months.

* Criminal Reference No. 74 of 1880.

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APRIL 29.

APPEAL.

LATE.

CRIMINAL.

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Upon an inquiry into the case, the District Judge was of opinion that Irbasapa's statement before the police patel was a statement upon which perjury could be assigned and punished under s. 193 of the Indian Penal Code; and, secondly, that the police patel, not being a subordinate of the Magistrate (a mamlatdar), within the meaning of s. 468 of the Code of Criminal Procedure, the sanction granted by him did not cover the prosecution on that branch of the alternative charge which referred to the statement before the police patel. In support of the former position, Mr. Watt said: "From the case *Imperatrix v. Malka* (the first case in the criminal rulings for the second-half of 1878), it would appear to have been a matter of doubt, until the above ruling was made, whether a statement made before a *Magistrate* under the Criminal Procedure Code, s. 122, could form the ground for a conviction under the Penal Code, s. 193. It seems to me very doubtful whether a statement made to a police officer, albeit on solemn affirmation, can form the ground for a similar conviction." On the question of the sufficiency of sanction, Mr. Watt submitted: "I would refer to the case of *Balaji Sitaram* (1). For an alternative charge there must be a sanction for the prosecution on each branch of that alternative charge. On the 31st December, 1879, the Second Class Magistrate gave his sanction to prosecute Irbasapa for either giving false evidence before the police patel or before himself. I do not consider that the police patel was judicially subordinate to the Second Class Magistrate so as to validate the sanction given by that Magistrate. I do not know of any decision in which this point has been decided. Section 3 of Bombay Act VIII of 1867 seems to show (but only, I imagine, for the purposes of the Act) to whom the police patel is subordinate, and the mamlatdar is not one of the persons mentioned in the said section."

[481] At the hearing of the reference, there was no appearance on either side.

PER CURIAM.

The proceedings in this case do not appear to disclose any illegality. If the prisoner made a false statement upon oath before a police patel, acting under s. 13 of Bombay Act VIII of 1867, he gave false evidence within the definition in s. 191 of the Indian Penal Code, and is liable to punishment under s. 193. On the other hand, s. 468 of the Code of Criminal Procedure renders a sanction necessary only when one of the offences specified therein is committed before or against a Civil or Criminal Court. Having regard to the definition of "Criminal Court" in s. 4, it seems clear that a police patel is not a Criminal Court within the meaning of the Code of Criminal Procedure. There appears, therefore, to be nothing in the case which renders any sanction necessary.

It is, no doubt, anomalous that a trial for an offence under s. 193 of the Indian Penal Code, committed before a police patel, should not require sanction; while offences under Chap. X, Indian Penal Code (which includes s. 181), committed before the same officer, cannot be tried without a sanction (the Code of Criminal Procedure, s. 467). But such appears to be the present state of the law.

The record and proceedings to be returned.

Order accordingly.