

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

PURBHUDÁS VELJI, APPLICANT, v. CHUGUN RÁICHAND,

DECREE-HOLDER.*

1883

February 15.

*Application for insolvency—Civil Procedure Code, Act X of 1877, Secs. 344 to 360
—Jurisdiction—Subordinate and District Courts⁶*

The lower Court ordered the attachment of a house belonging to the judgment-debtor in execution of a money decree passed against him by that Court. The judgment-debtor then applied to be declared an insolvent under section 344 of the Civil Procedure Code, Act X of 1877.

Held that it could not entertain the application.

UNDER section 617 of the Civil Procedure Code, Act X of 1877, this case was referred for the decision of the High Court by Ráo Bahádur Mukundrái Manirái, First Class Subordinate Judge of Ahmedabad. He submitted it with the following remarks:—

“An order for the attachment of a house belonging to the judgment-debtor (applicant) having been made in execution of a money-decree of this Court, he has applied to me to be declared an insolvent under section 344 of the Civil Procedure Code.”

“The local Government has, under section 360, invested all the Subordinate Courts of this district with the requisite powers; but the question is, whether, under section 344 and para. 2 of section 360, I can entertain such an application. I am of opinion that I cannot.

“By para. 1 of section 360 all the powers conferred upon District Courts by section 344 to section 359 can be delegated to subordinate Courts, but the object of investing the latter Courts with such powers is to enable them to dispose of all applications instituted under section 344, and referred to them by the District Courts under the latter portion of that para. Para. 3 of section 344 is imperative, and provides that ‘every such application shall be made to the District Court,’ and para. 2 of section 360 only excludes applications under section 344 by persons arrested in execution of decrees of Courts invested under para. 1 of section 360. The provision in section 344, that all applications by

* Civil Reference, No. 3 of 1883.

judgment-debtors against whose property orders of attachment have been made in execution of decrees for money shall be made to the District Court, has not been in any way affected by the said para. 2 of section 360. * * *

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“The order which will be passed under section 360 is not appealable. I beg, therefore, to submit the question for an authoritative decision before disposing of the application.”

There was no appearance of the parties in the High Court.

Per Curiam.—We think that the Subordinate Judge is right in holding that he cannot entertain the application in question.

APPELLATE CRIMINAL.

Before Mr. Justice Kembal and Mr. Justice Pinhey

QUEEN EMPRESS v. SHEKH SA'HEB BADRUDIN AND BADRUDIN
SHEKH SA'HEB.*

March 1.

Criminal Procedure Code, Act X of 1882, Secs. 439 and 423—High Court—Court of Revision—Court of Appeal—Appellate powers—Discretion—Appeal—Evidence.

In cases in which the law allows no appeal the High Court, as a Court of Revision, will not, except on very exceptional grounds, exercise the powers of an Appellate Court; but where such exceptional grounds exist, as where the conviction is not in any degree supported by the evidence, the High Court will exercise its discretion under section 439 of the Code of Criminal Procedure, and reverse the conviction and sentence.

THE first accused in this case was convicted by W. W. Drew, Magistrate (First Class) at Thána, of cheating under section 417, Indian Penal Code, and the second of abetment of cheating under sections 417 and 109. The complainant alleged that on the 3rd of October, 1881, the two accused, son and father, went to him to buy salt of him, that the complainant refused to let them have it without payment of the price, that the accused thereupon gave him a bill of exchange payable in a month and a half on a firm in Bombay signed by the first accused, and that the complainant consequently delivered the salt to the accused. On the expiration of the term mentioned in the bill the complainant presented it for payment, but the bill was dishonoured both by the drawee and the accused. The accused contended that the

* Criminal Review, No. 289 of 1882.