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was dismissed. The defendants did not appeal against the decree, but the plaintiffs appealed to the High Court (the amount of the original claim being more than Rs. 5,000) against the decree so far as it dismissed part of their claim. The High Court confirmed the decree of the Subordinate Judge on the 10th September, 1891.

On the 9th September, 1892, the plaintiffs presented an application (*darkhast*) for the execution of the decree. The Subordinate Judge rejected the application and passed the following order:—"This *darkhast* is beyond time and should be rejected. . . . The High Court confirmed the decree of the Court below. It seems to me that the award of Rs. 940-4-0 was not the subject-matter of the appeal, and limitation begins to run from the date of the original decree, which is the only decree which awards that sum to the plaintiffs. That decree was passed on 24th July, 1889, and the present *darkhast* was presented on 9th September, 1892."

Against this order the plaintiffs preferred the present appeal.

Ganesh Krishna Deshmukh, for the appellants (plaintiffs).—The High Court confirmed the Subordinate Judge's decree as a whole, and the decree to be executed is the appellate decree. The period of limitation must, therefore, begin to run from the date of that decree. Our *darkhast* is, therefore, within time.

The respondents did not appear.

ORDER.

[205] SARGENT, C.J.—The First Class Subordinate Judge is wrong in supposing that the original decree existed for the purpose of execution after the High Court confirmed it. The decisions in *Muhammad Sulaiman* v. *Muhammad Yar Khan*(1) and *Bhanushankar* v. *Raghunathram* (2) show that when the High Court confirms the decree of the Court below, the latter becomes incorporated in the decree of the High Court, which is thenceforth the only decree to be executed. We must, therefore, discharge the order of the Court below and send back the case for the First Class Subordinate Judge to dispose of the *darkhast* on the merits.

Order discharged and case sent back.

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CRIMINAL REVISION.

Before Mr. Justice Candy and Mr. Justice Fulton.

QUEEN-EMPRESS *v.* SADASHIV ATMARAM.* [1st March, 1893.]

Indian Penal Code (Act XLV of 1860), ss. 499, 500—Defamation—Sending a notice containing defamatory matter to the complainant—Publication.

The mere sending a notice to a person, albeit containing matter of a defamatory nature, cannot be held to be equivalent to making or publishing an imputation "intending to harm or knowing or having reason to believe that it will harm the reputation of the person to whom it is addressed."

When the accused sent by post a notice to the complainant, containing certain false imputations, and the complainant thereupon prosecuted the accused on a charge of defamation under s. 500 of the Indian Penal Code.

Held, that the accused was not guilty of defamation.

[R., 11 Cr. L.J. 281=5 Ind. Cas. 892=10 P.R. 1910 (Cr.)=6 P.W.R. 1910 (Cr).]

* Criminal Revision No. 37 of 1893.

(1) 11 A. 267. (2) 2 B.H.C.R. (A. C. J.) 101.

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CRIMINAL REVISION.

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THIS was an application for revision under s. 435 of the Code of Criminal Procedure (Act X of 1882).

The accused was charged, under s. 500 of the Indian Penal Code, with defaming the complainant by writing to him a notice containing certain false imputations to the following effect:—"(1) You (the complainant) have been for the last several days behaving inimically towards me without any reason, and I have good grounds to think that you have caused false actions to be filed against me by others. (2) You have been, on [206] the strength of your official position, intimidating me from time to time without any reason. (3) On Monday the 31st October, 1892, at about 7 A.M., you came to my shop and in the presence of others uttered all shorts of abuses and criminally intimidated me, and since then you have been sending me messages full of criminal intimidation. You have ventured to do so purely on the strength of your official position as a jamadar."

The accused was also charged, under s. 506 of the Indian Penal Code, with committing criminal intimidation by threatening the complainant with injury to his reputation.

The accused was tried before Mr. Webb, the Third Presidency Magistrate, who convicted him on both charges and sentenced him to pay a fine of Rs. 100, or, in default, to suffer two months' rigorous imprisonment.

Thereupon the accused made the present application to the High Court under its revisional jurisdiction.

Vasudev Gopal Bhandarkar, for the accused.

There was no appearance for the complainant.

JUDGMENT.

FULTON, J.—We see no reason to interfere with the conviction for criminal intimidation, but are of opinion that the charge of defamation has not been proved. The accused was charged with defaming the complainant by writing him a notice containing certain false imputations; but the mere sending of a notice to a person, albeit containing matter of a defamatory nature, cannot be held to be equivalent to making or publishing an imputation intending to harm or knowing or having reason to believe that it will harm the reputation of the person to whom it is addressed. The Magistrate appears to have perceived the difficulty of convicting of defamation as stated in the charge, and in his finding said that the publication was proved by Sadashiv Narayan and Eshvant Supraji; but this was quite a different act of publication from that alleged, either in the complaint or the charge, and having regard to the provisions of s. 198, Criminal Procedure Code, could not, we think, form the basis of a conviction of defamation. We reverse the conviction of defamation, and direct that out of the fine the sum of Rs. 50 be [207] refunded to the accused, and that the remaining Rs. 50 be retained as the fine imposed for criminal intimidation. As the Magistrate convicted under two distinct sections, he should have imposed separate punishments under each.

As the complaint was made by the complainant as a private individual, and not in the capacity of a public servant, it ought to have been stamped.

Conviction for defamation reversed.