

1895.
 LAKSHMAN-
 DÁS
 v.
 RÁMBHÁU.

second appeal—*Rámkrishna Gopál v. Vithu Shiváji* ⁽¹⁾; see also Second Appeal No. 753 of 1893 decided on the 22nd July, 1895.

FARRAN, C. J.:—We are of opinion that the instrument in question is a bond. It is not, we think, the less a bond because it does not come into operation unless and until the *hundi* has been dishonoured.

There is no evidence that the stamp and penalty were tendered and refused in the District Court. We cannot, therefore, interfere in second appeal, and now admit the instrument on payment of stamp duty and penalty—*Rámkrishna v. Vithu* ⁽¹⁾. Decree confirmed with costs.

Decree confirmed.

(1) P. J., 1873, p. 108; 10 Bom. H. C. Rep., 411.

CRIMINAL REVISION.

Before Mr. Justice Jardine and Mr. Justice Ránade.

QUEEN-EMPRESS v. DA'DA' HANMANT DA'NI.*

1895.
 September 5.

Penal Code (Act XLV of 1860), Secs. 503, 506—Criminal intimidation.

A threat of getting a police constable dismissed from the police service is not such a threat of injury as is punishable under section 503 of the Indian Penal Code (XLV of 1860).

THIS was an application for the exercise of the High Court's criminal revisional jurisdiction under section 435 of the Code of Criminal Procedure (Act X of 1882).

The accused was charged, under sections 504 and 506 of the Indian Penal Code (XLV of 1860), (1) with having insulted the complainant, a second class head constable of police, and (2) with having intimidated him by holding out a threat of getting him dismissed from service.

The accused was tried summarily on these charges before L. M. Deshpánde, First Class Magistrate of Poona, who acquitted him on the first charge, but convicted him on the second, and sentenced him to pay a fine of Rs. 10, or in default to undergo two days'

* Criminal Revision, No. 194 of 1895.

simple imprisonment. The reasons given by the trying Magistrate for the conviction were as follows:—

“There are two counts against the accused,—one that he abused and insulted the complainant, the other that he intimidated him. The abuses are said to be foul abuses and the intimidation was a threat by the accused to get the complainant dismissed. I think the first count has not been proved, but the second count has been. The intimidation has been clearly borne out by the evidence of Baloba and Bala Dangi. There may have been hot words between the complainant and the accused as regards the making of the panchnama. Still the accused has no business to intimidate the complainant in the manner alleged. The defence is not reliable, as the witnesses are almost all the tenants of the accused. Regarding abuses, I think the evidence is discrepant and it is fair to acquit the accused. Regarding intimidation, I convict the accused.”

Against this conviction and sentence the accused applied to the High Court under its revisional jurisdiction.

Narayan Vishnu Gokhale, for the accused, referred to *Reg. v. Moroba Bhaskarji*⁽¹⁾ and *Reg. v. Alya Dhurma*⁽²⁾.

There was no appearance for the Crown.

PER CURIAM:—Following *Reg. v. Moroba*⁽¹⁾ and *Reg. v. Alya Dhurma*⁽²⁾ the Court sets aside the conviction recorded against, and the sentence passed upon, Dada Hanmant Dani, and directs the return of the fine.

Conviction and sentence reversed.

(1) 8 Bom. H. C. Rep., Cr. Ca., 101.

(2) Cr. Rul. of 17th August 1870.

APPELLATE CRIMINAL.

Before Mr. Justice Jardine and Mr. Justice Ranade

QUEEN-EMPRESS v. TA'TYA BIN APPA'JI.*

Evidence Act (I of 1872), Sec. 26—Confession—Police custody—Jailor in a Native State.

The custody of the keeper of a jail in a Native State, who is not a police officer, does not become that of a police officer, merely because his subordinates, the warders of the jail, are members of the police force of that State. In the absence of any suggestion of a close custody inside the jail, such as may possibly occur when an accused person is watched and guarded by a police officer investigating an offence, section 26 of the Indian Evidence Act (I of 1872) does not exclude such a jailor from giving evidence of what the accused told him while in jail.

* Confirmation Case, No. 21 of 1895.

1895.

QUEEN-
EMPRESS
v.
DADA
HANMANT.

1895.

September 4.