

1918.

EMPEROR
v.
HAJI
GULAM
MAHOMED.

differ materially from the Statutes against forcible entry in England. It is not necessary and indeed would not be proper here to decide the substantial question between the parties, namely, whether a tenant at sufferance would or would not be a tenant within the meaning of section 9 of the Bombay Rent Act, II of 1918. That question and all other questions arising between them under the Rent Act would be matters properly for decision in regular proceedings in the civil Courts. The behaviour of the parties has no doubt been petty and entitles neither of them to much respect but it would not, in my opinion, be right to treat as merely trivial, as urged on behalf of the accused, deliberate endeavours to evade the special provision for settling peaceably disputes between landlords and tenants laid down by law. It is, on the contrary, requisite to insist by infliction of substantial punishment that landlords and tenants should not take the law into their own hands, but should proceed by regular process in the civil Courts as prescribed in this country by the Indian Legislature.

Rule discharged.

B. R.

CRIMINAL REVISION.

Before Mr. Justice Heaton and Mr. Justice Hayward.

In re VITHAL BHIMRAO KULKARNI.^a

1918.
October 15.

Criminal Procedure Code (Act V of 1898), section 195—Sanction to prosecute—Sanction obtained by decree-holder—Assignment of the decree—Assignee can prosecute under the sanction.

A decree-holder having obtained a sanction to prosecute a witness of the judgment-debtor for perjury, assigned the decree. The assignee of the decree

^aCriminal Application for Revision No. 213 of 1918.

then launched prosecution against the witness under the sanction. The witness objected that as the sanction was granted to the original decree-holder and not to the assignee, the prosecution should not go on:—

Held, overruling the objection, that the assignee was entitled to go on with the prosecution, inasmuch as there was no provision that the prosecutor should be specified in section 195 of the Criminal Procedure Code.

THIS was an application to revise an order passed by S. S. Deshpande, Magistrate of the First Class at Bijapur, N.D, confirmed on appeal by A. C. Wild, Sessions Judge at Bijapur.

Sanction proceedings.

In a suit brought by one Shidappa against Annaji, Vithal a witness of the latter, was found to have perjured himself. After the suit ended in a decree in Shidappa's favour, Shidappa applied for and obtained sanction to prosecute Vithal. The decree was assigned by Shidappa to Timmaji and Shidappa died shortly after the assignment.

Timmaji, purporting to act under the sanction, instituted a prosecution against Vithal. Vithal objected to the prosecution on two grounds: first, that the sanction required by section 195 of the Criminal Procedure Code was not produced; and, secondly, that the sanction was given to Shidappa whereas the complainant was Timmaji.

The trying Magistrate overruled the objections and directed the prosecution to proceed.

On appeal, this order was confirmed by the Sessions Judge.

Vithal applied to the High Court.

H. B. Gumaste, for the applicant.

K. H. Kelkar, for the complainant.

● *S. S. Patkar*, Government Pleader, for the Crown.

HAYWARD, J.:—A man called Shidappa sued a man called Annaji and another for debt. Annaji pleaded

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part payment and a man called Vithal swore to it. Shidappa got a decree in which it was held there was no part payment. He also obtained sanction to prosecute the man Vithal for perjury which was granted by the Subordinate Judge.

Shidappa then transferred his decree to one Timmaji who proceeded to prosecute Vithal for perjury before the First Class Magistrate. Vithal has objected to this prosecution on two grounds. The first ground is that there was no document of sanction beyond the order itself passed by the Subordinate Judge, and it was urged that a separate formal document was necessary as described in the case of *Queen-Empress v. Rachappa*⁽¹⁾. But it does not seem to me that it was ever intended in that case to lay down that a prosecution would be illegal in default of any such formal document and resting merely upon the actual order of the Subordinate Judge. There is no such express requirement in the law. All that is required is that there should be a sanction of the Subordinate Judge under section 195 of the Criminal Procedure Code. But the matter in any case is in my opinion of no substantial importance as the irregularity, if any, would have been covered by section 537 of the Criminal Procedure Code.

The second objection has been that the sanction was granted to Shidappa and was not granted to Timmaji and that therefore the prosecution should not proceed. There are, it is true, certain remarks as to the necessity of formal transfer by the grantee of such sanction in order to make it proper to proceed with the prosecution in the cases of *Jogendra Nath Mookerjee v. Sarat Chandra Banerjee*⁽²⁾ and *Kabi Kinkar Sett v. Nritya Gopal Roy*⁽³⁾, but it seems to me that the remarks there

⁽¹⁾ (1888) 13 Bom. 109 at p. 113.

⁽²⁾ (1905) 32 Cal. 351.

⁽³⁾ (1904) 32 Cal. 469.

were intended really to refer to the proper exercise of the discretion of the sanctioning authority. If they were intended to lay down anything more than that, then it would be my duty to record my respectful dissent, for there is no specific provision requiring that the prosecutor should be specified in section 195 of the Criminal Procedure Code.

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It seems to me that in all these cases the substantial question is not whether a particular person ought to be allowed to prosecute but whether the bar against the prosecution of the particular person charged with having broken the law ought to be removed as indicated in *In re Thathayya*⁽¹⁾ and *In re Mowjee Liladhar*⁽²⁾. In this case no particular reason has been shown why the alleged law-breaker Vithal should not be prosecuted for having, as alleged, perjured himself in the Court of the Subordinate Judge. It seems to me, therefore, that this application ought to be rejected, no sufficient reason having been shown why the prosecution of Vithal should be prevented by this Court.

HEATON, J.:—I concur.

We know that this man Vithal ought to be prosecuted because the Subordinate Judge made an order to that effect. A certified copy of this order was obtained by Timmaji who presented a complaint to the Magistrate. Thereupon no doubt the Magistrate was empowered to consider and could rightly consider whether he would accept the complaint at the hands of Timmaji. The Magistrate has considered this and he has accepted the complaint at the hands of Timmaji and I do not think in the circumstances there is any occasion for us to interfere.

Rule discharged.

B. R.

(1) (1888) 12 Mad. 47.

(2) (1905) 8 Bom. L. R. 32.