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The appeal must, therefore, be decreed. The judgment and decree of the lower Appellate Court are set aside and those of the Munsif restored with costs in all Courts to the plaintiff.

S. K. B. *Appeal allowed.*

CRIMINAL REFERENCE.

Before Sharfuddin and Teunon JJ.

1914

Aug. 19.

EMPEROR

v.

SABAR AKUNJI.*

Pardon—Withdrawal by Magistrate not granting the pardon—Omission to state grounds of forfeiture—Necessity of formal withdrawal or declaration of forfeiture—Plea of pardon to be raised at the trial—Trial of issues of forfeiture of pardon and guilt of accused—Criminal Procedure Code (Act V of 1898), ss. 337, 339.

Under the present law no formal withdrawal of pardon nor formal declaration of its forfeiture are required. If the approver be subsequently proceeded against, it is open to him to plead at his trial that the pardon has not, in fact, been forfeited, that is, that he has not violated its conditions. The two questions of forfeiture of pardon and of his guilt of the offence in respect of which he received the same, may be heard and determined together, under the circumstance.

Emperor v. *Kothia* (1), *Kullan* v. *Emperor* (2), and *Emperor* v. *Abani Bhushan Chuckerbutty* (3) referred to.

ON the 29th October 1913 a dacoity was committed in the house of one Madan Mandal at the village of Gandamani in the Khulna district. A conditional

*Criminal Reference No. 129 of 1914 by J. H. A. Street, Officiating Sessions Judge of Khulna, dated May 26, 1914.

(1) (1906) I. L. R. 30 Bom. 611. (2) (1908) I. L. R. 32 Mad. 173.
(3) (1910) I. L. R. 37 Calc. 845, 851.

pardon was tendered under s. 337 of the Criminal Procedure Code, to one Sabar Akunji who accepted the same. He was examined before the committing officer at the preliminary inquiry against certain others charged with the dacoity, and made a full statement implicating himself and the accused. He was examined as a witness at the trial in the Sessions Court, on 3rd March 1914, when he professed complete ignorance of the dacoity. The case against the accused on trial was then withdrawn by the Crown.

On the next day Sabar was produced before the Subdivisional Officer who had granted the pardon, but was simply ordered to be remanded to *hajat*. The Magistrate was then transferred, and, on the 16th, a Deputy Magistrate, who was not then the Subdivisional Officer, passed the following order "The accused will be proceeded against under s. 395, of the Indian Penal Code." He was duly committed and the trial came on before the Sessions Court on the 25th May. After the jury were sworn and the Public Prosecutor had opened the case, the legality of the commitment was considered doubtful, and the Sessions Judge referred the case to the High Court, recommending that the commitment be quashed on the grounds (i) that the Deputy Magistrate who withdrew the pardon was not competent to do so, not being the successor in office of the Subdivisional Officer who had granted it; and (ii) that the grounds of the forfeiture of pardon had not been given by the Magistrate who had withdrawn it.

Babu Atulya Charan Bose, for the Crown.

No one appeared for the accused.

SHARFUDDIN AND TEUNON JJ. In this case it appears that one Sabar Akunji and a certain number of others

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were charged with the commission of a dacoity on the 29th of October 1913. Under section 337 of the Criminal Procedure Code pardon was tendered to Sabar Akunji and was accepted by him on the usual condition that he should make a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence in question. In the Court of the Committing Magistrate it appears that Sabar Akunji did make a statement implicating himself and others in the commission of the dacoity. But when the trial took place in the Court of the Sessions Judge he resiled from that statement, and professed complete ignorance of the matter. Thereupon, proceedings were taken against him and he was committed to the Court of Session to take his trial. The learned Sessions Judge has thereupon made this reference to this Court with a view to have it declared that the proceedings taken against the accused were without jurisdiction on the ground that the pardon had not been declared forfeited, and the grounds of forfeiture had not been reduced into writing. Under the present Code of Criminal Procedure, no formal withdrawal of a pardon and no formal declaration that the pardon has been forfeited are required. If the person who has accepted a conditional pardon be subsequently proceeded against, it is open to him to plead on his trial that the pardon has not, in fact, been forfeited, that is to say that he has not violated the conditions on which the pardon was tendered and accepted. This then becomes one of the issues to be heard and determined at the trial. In the present case there is no need that the issue should be separately tried; for if on his statement made in the Court of the Committing Magistrate and on other evidence it be found that he took part in the commission of the dacoity in question, it will follow that when he resiled from his

first statement in the Court of Sessions and denied all knowledge of the matter, he violated the conditions on which the pardon had been tendered. So that the two questions whether he has forfeited the pardon and whether he has or has not been guilty of the offence of dacoity may be heard and determined together. In support of this view, and for the information of the Sessions Judge, we would refer him more particularly to the following reported cases: *Emperor* v. *Kothia* (1), *Kullan* v. *Emperor* (2) and *Emperor* v. *Abani Bhushan Chuckerbutty* (3). With these remarks we return the record and direct that the trial be now proceeded with.

E. H. M.

(1) (1906) I. L. R. 30 Bom. 611. (2) (1908) I. L. R. 32 Mad. 173.
(3) (1910) I. L. R. 37 Calc. 845, 851.