

1923

TULSI
TEJANI
v.
EMPEROR.
RICHARDSON
J.

If the construction of section 498 which I adopt is correct I fail to understand on what principle it can be suggested that this Court, in the absence of any statutory power, is competent, or has an inherent jurisdiction, to liberate the applicant on bail. The learned counsel has produced no authority which in my opinion would justify us in concluding that such a jurisdiction exists.

If any indulgence is to be sought for, it is open to the applicant, if so advised, to move the Local Government to suspend the sentence under section 401 of the Criminal Procedure Code.

Without expressing any opinion on the merits of the case, I agree with my Lord that the application must be refused.

E. H. M.

Application refused.

CRIMINAL REVISION.

Before Newbould and Sukrawarthy JJ

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Feb. 22.

GANESH SAHU

v.

EMPEROR.*

Dishonest Retention—Property stolen from different persons—No evidence of receipt at different times—Conviction in respect of certain articles seized by the police on a particular date, whether a bar to a trial in respect of other articles seized on the same occasion—Criminal Procedure Code (Act V of 1898), s. 403—Penal Code (Act XLV of 1860), s. 411.

When there is no evidence that articles stolen from several persons were received on different dates, the dishonest receipt of the same is a single offence under s. 411 of the Penal Code, and a person tried on a charge thereunder, in respect of the retention of some of the articles on a certain

* Criminal Revision No. 1128 of 1922 against the order of D. K. Mitter, Additional District Magistrate of the 24-Parganas, dated Nov. 28, 1922.

date, cannot be tried, on a similar charge, in respect of other articles of which he was in possession on such date.

Queen Empress v. Makhan (1) and *Ishan Muchi v. Queen-Empress* (2) followed.

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THE petitioner resided in the house of his father, Mahadeo, at No. 1, Goaltoli Road, Entally. On the 7th December, 1921, the police searched the premises, seized a number of articles, alleged to have been stolen, and arrested the petitioner and his father. They were put on trial before a Deputy Magistrate at Alipore on a charge, under s. 411 of the Penal Code, of dishonest retention, on the said 7th December, of some of the articles seized on that date. On the 31st July, 1922, the petitioner only was convicted, but he was acquitted on appeal. Thereafter he was again put on trial on a charge under s. 411, of dishonest retention, on the said 7th December, 1921, of certain other articles which had been seized on that date. The petitioner was convicted, and the conviction was affirmed on appeal. He then obtained the present Rule. The articles seized by the police on the above date had been stolen from different persons, but there was no evidence of dishonest receipt of them on different dates.

Babu Dasarathi Sanyal (with him *Lalit Mohan Sanyal*), for the petitioner. The second conviction is bad : see *Queen-Empress v. Makhan* (1) and *Ishan Muchi v. Queen-Empress* (2).

The Deputy Legal Remembrancer (Mr. Orr), for the Crown. The offences, of which the accused was charged on the two occasions, were distinct, as the articles were stolen from different persons.

NEWBOULD AND SUHRAWARDY JJ. The petitioner in this case has been convicted, under section 411 of

(1) (1893) I. L. R. 15 All. 317.

(2) (1893) I. L. R. 15 Calc. 511.

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the Penal Code, on the charge of having been in dishonest possession of stolen property on the 7th December, 1921. It appears that on that date several articles of property were found in the room occupied by the petitioner. In respect of some of them he was prosecuted, and after being convicted under section 411 of the Penal Code by the trying Magistrate, he was acquitted on appeal. He has now been tried and convicted in respect of other properties found in his possession on the same date. There was evidence that the different articles, which were the subject of the charges in the two trials, were stolen from different persons, but there is no evidence that they were received at different times. The facts of the case cannot be distinguished from those of *Queen-Empress v. Makhan* (1), which follows the decision of a Divisional Bench of this Court in *Ishan Muchi v. Queen-Empress* (2). On this authority we hold that the second trial was illegal under the provisions of section 403 of the Criminal Procedure Code.

We, accordingly, make this Rule absolute, and set aside the conviction and sentence passed on the petitioner, and direct that he be discharged from his bail bond.

E. H. M.

Rule absolute.

(1) (1893) I. L. R. 15 All. 317.

(2) (1888) I. L. R. 15 Calc. 511.