

extinguished, but rather momentarily suspended and revived: see *Kristina v. Venkatachella* (1) *Kandanath v. Chemboli* (2). In this view, the cross-objection must succeed.

The result is that the appeal is dismissed and the cross-objection allowed. The decree of the Subordinate Judge is modified so that the plaintiffs may have relief in respect of the 'ga' land in addition to the 'kha' land. The defendant will pay the plaintiffs their costs in all the Courts. A self-contained decree will be drawn up in supersession of the decree of the lower Appellate Court.

CHOTZNER J. concurred.

B. M. S. *Appeal dismissed; cross-appeal allowed.*

(1) (1872) 7 Mad. H. C. B. 60, 64. (2) (1913) Mad. W. N. 95.

1922

TINKOWRI
PATHAK
v.
RAM GOPAL
PATHAK.

MOOKERJEE
J.

CRIMINAL REVISION.

Before Newbould and Subrahariy JJ.

DEHRI SONAR

v.

EMPEROR.*

1923

Jan. 4.

Previous conviction—Adducing evidence of previous conviction and framing charge thereof before the accused is called upon for the defence—Legality of the procedure—Criminal Procedure Code (Act V of 1898) s. 310.

Section 310 of the Criminal Procedure Code does not apply to trials before Magistrates. The admission of evidence of a previous conviction and the framing of a charge under s. 75 of the Penal Code, before the accused is called upon for the defence, is not an illegality nor an irregularity.

* Criminal Revision No. 960 of 1922, against the order of G. B. Mumford, Additional Sessions Judge of Alipore, dated Sep. 13, 1922, affirming the order of J. K. Biswas, Subdivisional Magistrate of Alipore, dated Aug. 7, 1922.

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 DEHRI
 SONAR
 v.
 EMPEROR.

The accused was tried by the Subdivisional Magistrate of Alipore, on charges under ss. 457 and 380 of the Penal Code and on a charge under these sections read with s. 75, and was convicted thereunder, but sentenced only under ss. $\frac{380}{75}$ to rigorous imprisonment for 18 months. It appeared that on the 21st June 1922, after the prosecution witnesses had been examined in chief, the Magistrate framed charges under ss. 457 and 380 of the Penal Code against the accused. On the 18th July a sub-inspector of police was examined to prove a previous conviction of the accused in August 1914 at Arrah, and the Magistrate thereupon added a charge under ss. 457 and 380 read with s. 75 of the Penal Code. The case was then postponed for the defence to the 7th August, on which date a defence witness was examined, and the accused convicted and sentenced. An appeal against the order of conviction was dismissed on the 13th September. The petitioner then obtained the present Rule on the 6th ground which is set out in the judgment of the High Court.

Babu Manmatha Nath Mukerjee (with him *Babu Kanai Dhan Dutt*), for the petitioner. The Magistrate should not have allowed evidence of a previous conviction to be given till after the accused had been called upon for the defence: *Golam Hossein Khan v. Emperor* (1).

The Deputy Legal Remembrancer (Mr. Orr), for the Crown. There is no provision in the Code prohibiting the procedure objected to. S. 310 does not apply. The accused was not prejudiced.

NEWBOULD AND SUHRAWARDY JJ. This Rule was granted only on the 6th ground set out in the petition

which is in the following terms, "that the trial has "been vitiated by the admission of the evidence of "previous conviction prior to this accused entering "upon his defence."

It appears that on the 21st June the accused was charged with having committed offences punishable under ss. 457 and 380 of the Penal Code, and that on the 18th July witnesses were examined to prove previous conviction of the accused, and a charge was framed that he was liable to enhanced punishment, under the provisions of s. 75 of the Penal Code, in consequence of previous conviction. We are unable to see that there has been illegality or irregularity in the Magistrate's procedure. Section 310 of the Criminal Procedure Code lays down a special form of trial of the issue of liability to enhanced punishment in consequence of previous conviction. But this section is expressly made applicable to trials before the Court of Sessions only, and does not apply to trials before a Magistrate. In certain reported cases it has been held that the accused has been prejudiced by too early an admission of evidence as to previous conviction, but in the present case it has not been shown to us that there could have been any prejudice. We, therefore, hold that the ground on which this Rule was issued fails, and we accordingly discharge this Rule.

The petitioner must surrender to his bail, and undergo the unexpired portion of his sentence.

E. H. M.

Rule discharged.

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