

CRIMINAL REVISION.

Before Mitter J.

NAWABALI HAJI

v.

JAINAB BIBI.*

1932

Jan. 27.

Appeal—Sentence—Fines—Aggregate value less than Rs. 50, whether appealable—Code of Criminal Procedure (Act V of 1898), s. 413—Indian Penal Code (Act XLV of 1860), ss. 324, 379.

In section 413, Code of Criminal Procedure, the words “a sentence of fine” must be held to include the cases where the aggregate sentence does not exceed a fine of Rs. 50.

Akabbar Ali v. Emperor (1) considered and distinguished.

Where two sentences of fine are passed, it is the aggregate which is to be looked into for the purpose of determining the right of appeal.

Shidlingappa Gurulingappa v. Emperor (2) followed.

If, in the case of the aggregate exceeding Rs. 50, a right of appeal is allowed, it follows that in such cases where the aggregate is less than Rs. 50 a right of appeal is barred.

RULE obtained by the accused.

The facts of the case and the arguments advanced at the hearing thereof appear fully in the judgment.

Sureshchandra Talukdar and *Bhupendranath Das Gupta* for the petitioners.

No one for the (complainant) opposite party.

MITTER J. A very ingenious argument has been put forward by Mr. Talukdar, who appears for the petitioners in this Rule. The question involved in this Rule turns on the construction of section 413 of the Code of Criminal Procedure and concerns the right of appeal of a convicted person. It appears that the petitioners, Nawabali and Ataharali, were convicted

*Criminal Revision, No. 1149 of 1931, against the order of T. H. Ellis, Sessions Judge of Bakarganj, dated Oct. 10, 1931, confirming the order of S. P. Banerji, first class magistrate of Pirojpur, dated Oct. 6, 1931.

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by the first class magistrate of Pirojpur under section 379 and section 114 read with 324 of the Indian Penal Code, and both of them have been sentenced under two sections—Nawabali having been sentenced under section 379 to pay a fine of Rs. 20 and under section 114 read with 324 a fine of Rs. 15 and the other accused, Ataharali, having been sentenced to pay a fine of Rs. 20 under section 379, Indian Penal Code, and to pay a fine of Rs. 30 under section 324 of the same Code. In the case of each of the petitioners, the aggregate fine does not exceed Rs. 50. Against the convictions and sentences an appeal was preferred to the court of the District and Sessions Judge of Bakarganj and the learned District and Sessions Judge was of opinion that the appeal before him was barred by the provisions of section 413 of the Code of Criminal Procedure. Section 413 runs as follows :—

Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a court of session passes a sentence of imprisonment not exceeding one month only or in which a court of session or District Magistrate or other magistrate of the first class passes a sentence of fine not exceeding Rs. 50 only.

As I have already stated, the aggregate fine in each case does not exceed Rs. 50 and, according to the plain language of the statute, it seems to me that the District and Sessions Judge is right in holding that the appeal is barred. But it has been argued by Mr. Talukdar that stress must be laid in construing the section on the use of the expression *a* sentence of fine and it is said that here there is not *a* sentence of fine but there are two sentences of fine and, in support of this contention, reference has been made to a decision of Mr. Justice Cuming in the case of *Akabbar Ali v. Emperor* (1). That case, however, is distinguishable : for, in that case, the learned magistrate of the first class passed two sentences of Rs. 40 each. Therefore, the aggregate sentence was in excess of Rs. 50. It follows that it did not come within the mischief of section 413 of the Code of Criminal Procedure. It is

(1) (1931) I. L. R. 59 Calc. 19.

argued, however, that the reasoning on which this decision is based assists the contention of the appellant that in order to shut out the right of an appeal there must be *one* sentence of fine not exceeding Rs. 50 and not two separate sentences of fine although the aggregate might be less than Rs. 50. There are perhaps some passages in the judgment of my learned brother, Mr. Justice Cuming, which may be quoted here as lending colour to the contention put before me, *e.g.*, "The learned advocate argues, therefore, that the "only restriction to the right of appeal is that when "a magistrate of the first class has passed *a* sentence of "fine not exceeding Rs. 50. In this case, he contends, "that the magistrate has passed two sentences each of "Rs. 40 and, therefore, it does not fall within the "mischief of section 413 and that the petitioners are "entitled to appeal.

"The view of law, which is a novel one, is, I think, "well-founded. Section 408 grants the right of appeal "and any restriction on that right of appeal must be "very strictly construed in favour of the subject. Any "restriction, that takes away a very substantial right, "must always be very strictly construed and construed "in favour of the subject. In that view of the case, "I am of opinion that, so far as the petitioners Nos. 1 "and 2 are concerned, an appeal does lie." It is not necessary for me to say anything with regard to this portion of the reasoning of the learned Judge, for the facts of the case before me are quite distinguishable and, having regard to the circumstance that the fine exceeded Rs. 80 in aggregate, the conclusion of the learned Judge was surely right. To my mind, it seems the words "*a* sentence of fine" must be held to include the cases where the aggregate sentence does not exceed a fine of Rs. 50. This view is supported by a decision of Sir Norman McLeod, Chief Justice and Mr. Justice Crump of the Bombay High Court in the case of *Shidlingappa Gurulingappa v. Emperor* (1), which has been reported, but not in the authorised report.

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In that case, the magistrate passed two sentences of fine amounting in the aggregate to Rs. 80 and the learned Chief Justice observes: "Therefore, in effect, "a sentence of fine exceeding fifty rupees has been "passed and an appeal lies". In other words, the learned Chief Justice of the Bombay High Court considered, and, in my opinion, rightly considered, that where two sentences of fine are passed, it is the aggregate which is to be looked into for the purpose of determining the right of appeal. If in the case of the aggregate, exceeding Rs. 50 a right of appeal is allowed, it follows that in each case where the aggregate is less than Rs. 50 a right of appeal is barred.

In this view the Rule must be discharged.

Rule discharged.

G. S.