

CRIMINAL REVISION.

Before Cuming J.

AKABBAR ALI

v.

EMPEROR.*

1931

Mar. 10.

Appeal—Restriction—Co-accused's right to appeal when personal sentence unappealable—Code of Criminal Procedure (Act V of 1898), ss. 408, 413, 415 A.

Where a first class magistrate passed two sentences of fine, each of Rs. 40 only, under two sections of the Indian Penal Code, on two accused and one such sentence on each of the remaining two co-accused,

held that (1) an appeal lay to the Sessions Judge both with regard to the former and (2) also with regard to the latter, having regard to the provisions of section 415A of the Code of Criminal Procedure.

Held, further, that section 408 of the same Code granted 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.

RULE obtained by all the four accused.

The facts of the case appear fully in the judgment.

Ramendrachandra Ray for the petitioners.

No one for the Crown.

CUMING J. This Rule has been granted on the application of the four petitioners on the following facts: The four petitioners were convicted by a magistrate of the first class under section 447, Indian Penal Code, and each sentenced to pay a fine of Rs. 40 under that section. The petitioners, Nos. 1 and 2, were further convicted under section 323 of that Code and each sentenced to pay a fine of Rs. 40 under that section also. All the four petitioners appealed to the Sessions Judge. The learned Sessions Judge, holding that no appeal lay, dismissed the appeal. They then moved this Court and have obtained the Rule on the ground that an appeal does lie.

*Criminal Revision, No. 144 of 1931, against the order of C. Bartley, Sessions Judge of the Assam Valley Districts, dated Nov. 22, 1930.

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The learned advocate for the petitioners has put the case as follows: Section 408, Criminal Procedure Code, granting a right of appeal to any person convicted by a magistrate of the first class to the court of sessions makes no mention of sentence. The only restriction on this right of appeal will be found, it is argued, in section 413, in which it is said that there shall be no appeal by a person convicted in cases, in which a court of sessions passes a sentence of imprisonment not exceeding one month only, or in which a court of sessions or District Magistrate or other magistrate of the first class passes a sentence of fine not exceeding Rs. 50 only. 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.

This view of the 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 this case, I am of opinion that, so far as the petitioners, Nos. 1 and 2, are concerned, an appeal does lie; and, having regard to the provisions of section 415A, there is a right to appeal on behalf of the other two petitioners.

The Rule is made absolute. The order of the learned Sessions Judge is set aside and he must hear the appeals.

Rule absolute.

G. S.