CRIMINAL REFERENCE.

Before Edgley J.

KALI CHARAN SARDAR

v.

ADHAR MANDAL.*

1938

Dec. 13.

Appeal—Combination of punishments—Sentences of fine—Aggregate value less than Rs. 50—Code of Criminal Procedure (Act V of 1898), ss. 413, 414, 415.

Section 415 of the Criminal Procedure Code refers to a combination of punishments of imprisonment and fine and has no application in a case in which two non-appealable sentences of fine have been passed and the aggregate amount of fine does not exceed Rs. 50.

Nawabali Haji v. *Jainab Bibi* (1) approved.

Makrand Sing v. *Ganga* (2) dissented from.

CRIMINAL REFERENCE.

One Adhar Mandal and three others were convicted by the Subdivisional Magistrate of Satkhira under ss. 147 and 323 of the Indian Penal Code and sentenced to pay fines of Rs. 10 each under each of the sections or in default to suffer rigorous imprisonment for ten days. They filed an appeal before the Sessions Judge of Khulna who decided to treat the appeal as a petition for revision as he was doubtful whether an appeal lay to him and referred the case to the High Court with a recommendation that the sentences passed on the appellants should be set aside.

Kumud Bandhu Bagchi for *Biswa Nath Naskar* in support of the reference. Two or more punishments of the same kind constitute a combination of punishments within the meaning of s. 415 of the

*Criminal Reference, No. 198 of 1938, made by S. Sen, Sessions Judge of Khulna, dated Nov. 14, 1938.

(1) (1932) I. L. R. 59 Cal. 1131. (2) [1937] A. I. R. (Oudh) 524.

1938

Kali Charan Sardar v. *Adhar Mandal.*

Criminal Procedure Code and the punishments referred to in that section include punishments of the same kind. *Makrand Singh* v. *Ganga* (1). In this case the Magistrate has passed two sentences of fine of Rs. 10 each and not a sentence of fine and therefore it does not fall within the mischief of s. 413. *Akabbar Ali* v. *Emperor* (2). In *Nawabali Haji* v. *Jainab Bibi* (3), s. 415 was not referred to.

No one for the (complainant) opposite party.

EDGLEY J. In this case the petitioners were convicted by the Subdivisional Magistrate of Satkhira under ss. 147 and 323 of the Indian Penal Code and were sentenced to pay fines of Rs. 10 each or in default to suffer rigorous imprisonment for ten days under each of those sections. An appeal was preferred against this decision to the Sessions Judge of Khulna. From his letter of reference it appears that the learned Judge was doubtful whether an appeal actually lay to him or not with regard to this matter. He, therefore, decided to treat the appeal as a petition for revision and he has referred the case to this Court with a recommendation that the sentences passed upon the petitioners should be set aside.

The first point for decision in connection with this matter is whether or not an appeal lay to the Sessions Judge against the order passed by the Subdivisional Magistrate of Satkhira. The only ground upon which it could be held that an appeal lay to the learned Judge would be to hold that an appeal lies under s. 415 of the Code of Criminal Procedure, when two or more non-appealable sentences of fine are combined. There is a decision of the Oudh Chief Court in favour of this proposition, namely, in the case *Makrand Singh* v. *Ganga* (1) in which it was held that s. 415 of the Criminal Procedure Code allowed an appeal not only when punishments of different kinds were combined but also in the case of

(1) [1937] A. I. R. (Oudh) 524. (2) (1931) I. L. R. 59 Cal. 19.
(3) (1932) I. L. R. 59 Cal. 1131.

the combination of punishments of the same kind. A different view was taken in this Court with regard to this matter by Mitter J. in the case of *Nawabali Haji* v. *Jainab Bibi* (1), in which the learned Judge held that the words "a sentence of fine" in s. 413 of the Code of Criminal Procedure must be held to include the cases where the aggregate sentence does not exceed a fine of Rs. 50. It would follow, therefore, according to the view held by Mitter J., that there can be no appeal in which the aggregate combined sentences do not exceed Rs. 50. With this view I agree.

Section 415 of the Code of Criminal Procedure provides that an appeal may be brought against any sentences referred to in ss. 413 and 414, by which any two or more of the punishments mentioned therein are combined. The punishments mentioned in ss. 413 and 414 are imprisonment and fine. In this connection it is significant that in s. 414 of the Code of Criminal Procedure, as the section stood before it was amended in 1923, another punishment was also mentioned, namely, whipping. To my mind the combination of punishments, which is contemplated by s. 415 of the Code and as these sections now stand after the amendment of 1923, refers to a combination of the punishments of imprisonment and fine, but this section, in my opinion, can have no application in a case in which two non-appealable sentences of fine have been passed and the aggregate amount of fine does not exceed Rs. 50.

The learned Judge who decided *Makrand Singh's* case (*supra*), refers to the difficulty created by the presence in s. 415 of the Code of the words "two or "more" when only two punishments are mentioned in ss. 413 and 414. In my view, the presence of these words in the section must be due to the fact that at the time when the amending Act of 1923 was passed and sentences of whipping were made appealable, the

(1) (1932) I. L. R. 59 Cal. 1131.

1938

Kali Charan Sardar v. *Adhar Mandal.*

Edgley J.

necessity of making a slight consequential amendment in s. 415 escaped the notice of the legislature. The fact remains, however, that, as the sections now stand, two punishments are mentioned in ss. 413 and 414, *viz.*, the punishments of imprisonment and fine and, as pointed out above, s. 415, I think, only refers to a combination of those particular punishments. In this view of the case I do not consider that an appeal lay to the learned Sessions Judge. Therefore he had no option but to refer this case to this Court.

The Reference is accepted for the reasons set forth in the letter of the Sessions Judge, dated November 14, 1938. The conviction and sentence passed upon the petitioners are set aside. The fines if already paid, will be refunded.

A. C. S.