

BENSON  
AND  
ABDUR  
RAHIM, JJ.  
—  
THE  
CROWN  
PROSECUTOR  
v.  
G. KOTHAN-  
DARAMIAH.

Webster as his evidence shows treated the numbers of the magazine which were delivered to him in the same manner as ordinary trade circulars and threw them away. It is true that he did not return the articles nor did he reply to any of the accused's postal cards but there was no obligation on him to do either of these things. It may be that the accused interpreted Mr. Webster's silence as indicative of willingness on his part to pay for the numbers sent to him. But, even if so, he could not reasonably have thought that he had received an order from Mr. Webster to send the value payable post article. The case of *Ghulam Rabbani v. King-Emperor*(1) referred to by the Magistrate was a very different case. There there was an order to send the article in question insured for a certain amount and it was actually sent value payable post but uninsured for a somewhat larger amount. There can be no doubt in this case that the accused has offended against the post office regulations and we convict him under section 64 of the Act. The learned Crown Prosecutor tells us that the object of this appeal is to obtain a ruling as to whether the Magistrate's view of the law is correct, and he does not press for a heavy penalty. We sentence the accused to pay a fine of Rs. 10 (Rupees ten) or in default to 5 (five) days' simple imprisonment.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Benson and Mr. Justice Sankaran-Nair.*

ALAGIRISAMI NAICKEN

v

EMPEROR.\*

*Criminal Procedure Code V of 1898, ss. 337, 339—No true and full disclosure where witness subsequently recants his previous statement—On trial after withdrawal of pardon, if pardon pleaded in bar, jury to determine whether pardon forfeited.*

A person who has accepted a tender of pardon under section 337 of the Criminal Procedure Code and made a true and full disclosure before the inquiring Magistrate, may be recalled and examined by such Magistrate; and his pardon will be forfeited if he resiles from such former statement.

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(1) 6 All. L.J., 481.

\* Criminal Appeal No. 697 of 1909.

