

APPELLATE. CRIMINAL.

Before Mr. Justice Sadasiva Ayyar.

Re PANGA MAISTRY (ACCUSED IN CALENDAR CASE NO. 411 OF 1912. November 15.
1910 ON THE FILE OF THE JOINT MAGISTRATE OF GUNTUR, PETITIONER),
APPELLANT.*

Planters Labour Act (Madras Act I of 1903), ss. 24 and 35—Imprisonment for refusal to perform contract, extent of.

Prosecutions and punishments under the Planters Labour Act (Madras Act I of 1903) cannot continue indefinitely. Only two terms of imprisonment may be awarded, once under section 24 and again once under section 35. The refusal of a maistry or a labourer under section 35 to perform his contract cannot be treated as a temporary refusal.

CASE referred for the orders of the High Court under section 438 of the Criminal Procedure Code (Act V of 1898), by E. W. LEGH, the Acting District Magistrate of the Nilgiris, in his letter dated 9th February 1912.

The facts of this case are stated in the following Order,
E. R. Osborne for the Public Prosecutor.

ORDER.—The accused was sentenced to six weeks' imprisonment under section 24 of the Planters Labour Act (Madras) because he (being a maistry) failed to remain upon an estate for the term during which he agreed to supply coolies to the estate. Having undergone the six weeks' imprisonment imposed upon him, he was brought up again under section 35 of the Act before the Magistrate who directed him to complete the performance of his contract. He refused and thus made himself liable "to further prosecution and punishment" (see the wording of section 35). He was again therefore further prosecuted and punished with the maximum term of three months' rigorous imprisonment provided by section 24. He underwent that punishment also. On his release, a second time, the planter again brought him before the Magistrate for renewed directions and for renewed punishment but the Sheristadar-Magistrate refused to give further directions and to impose further punishment. One of his grounds was that it did not seem to be the intention of the

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* Criminal Revision Case No. 90 of 1912 (Referred Case No. 8 of 1913).

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legislature that prosecutions and punishments under section 35 should continue indefinitely.

The District Magistrate has made this reference on the ground that because section 35 says (at the end of the first paragraph) that "no conviction under this Act or imprisonment under such conviction shall have the effect of releasing any maistry or labourer from the terms of his contract or labour as the case may be," the further (second) prosecution and punishment provided for under section 35 will not prevent a third, fourth or fifth or any number of prosecutions and punishments. I think that the meaning of the provision is merely that the civil contractual obligation does not cease by the criminal courts' punishment for breach of the contract and not that a maistry or labourer could be punished indefinitely till he dies.

The proviso to the section, though it applies to labourers, only indicates that even in the case of a labourer, no direction could be given to him to complete his contract after the expiry of one year from the determination of the original period. The Magistrate is given power to give only one direction after release from a first punishment for an offence and to warn the accused that he would subject himself to the "pain of further prosecution and punishment in case of his refusal" to obey that direction. That refusal is a final refusal on the part of the maistry or labourer and he can be punished for that only once more. His refusal cannot be treated as a temporary refusal lasting only for the period of his punishment for that refusal and he cannot be made to repeat his refusal every three months and again and again punished.

Section 33, clause (2), shows that his refusal may be revoked by the maistry or labourer during the time of his imprisonment and the Magistrate on the planter's application may cancel the remainder of the sentence which is being undergone by the accused and make over the accused to the planter to complete his contract. All this shows that the argument that the Magistrate could go on imprisoning a maistry indefinitely, obtaining periodical refusals from him cannot be accepted for a moment.

The Sheristadar-Magistrate was therefore perfectly justified in refusing to give directions to and to punish the maistry further.