## APPELLATE CRIMINAL.

*Before Mr. Justice Burn and Mr. Justice Stodart.*

IN RE PALUVADI VENKATARAMAYYA *alias* PALUVADI VENKATARAMANAYYA (TWENTY-THIRD ACCUSED), PETITIONER.* 1939, September 19.

*Code of Criminal Procedure (Act V of 1898), sec. 415—Sentence referred to in sec. 413 by which two or more of punishments therein mentioned are combined—Meaning of—Two or more sentences of fine, if included.*

A Sub-Magistrate who tried twenty-four persons convicted all of them under sections 147, 341, 355 and 323 read with section 149, of the Indian Penal Code but, considering that they were persons who might properly be dealt with under section 562, Criminal Procedure Code, he submitted the case to the Sub-Divisional First Class Magistrate under the provisions of section 562 (1) of the Criminal Procedure Code. The First Class Magistrate, dealing with the case under the provisions of section 380, Criminal Procedure Code, convicted all the twenty-four persons of rioting and sentenced them for that offence to pay a fine of Rs. 20 each and he convicted accused Nos. 6 and 24 under section 355 of the Penal Code also and sentenced them to pay a fine of Rs. 25 each for that offence. Accused No. 23 alone appealed to the Sessions Judge, alleging that accused Nos. 6 and 24, having been sentenced to pay two fines of Rs. 20 and Rs. 25, had a right of appeal under section 415-A of the Criminal Procedure Code and that, therefore, he (accused No. 23) having been convicted at the same trial had also a right of appeal. The Sessions Judge held that none of the twenty-four accused had any right of appeal and rejected the appeal. On a revision petition filed by accused No. 23 against the order of the Sessions Judge,

*held* that the Sessions Judge was right and the application for revision was unsustainable.

* Criminal Revision Case No. 418 of 1939 (Criminal Revision Petition No. 338 of 1939).

VENKATA-RAMAYYA, *In re.*

Section 415, Criminal Procedure Code, when it refers to two or more punishments, refers to two or more punishments of different kinds. In the present case the Sub-Divisional Magistrate did not pass any sentence by which any two or more of the punishments mentioned in section 413, Criminal Procedure Code, were combined. He did not combine any of the punishments in either of the sentences that he imposed. He imposed two separate sentences of fine. There was no combination of punishments in one sentence within the meaning of section 415, Criminal Procedure Code.

*Public Prosecutor, Madras* v. *Dasa Pai*(1) disapproved.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of Session of the Kurnool Division in Criminal Appeal No. 7 of 1939 preferred against the judgment of the court of the Sub-Divisional First Class Magistrate of Markapur in Calendar Case No. 48 of 1938.

*K. S. Jayarama Ayyar* for petitioner.

*K. Venkataraghavachari* for *Public Prosecutor* (*V. L. Ethiraj*) for the Crown.

BURN J.

The ORDER of the Court was delivered by BURN J.—This is an application for revision of the order of the learned Sessions Judge, Kurnool, in Criminal Appeal No. 7 of 1939. That appeal was presented to the learned Sessions Judge from the decision of the Sub-Divisional First Class Magistrate, Markapur, in Calendar Case No. 48 of 1938. In that case the First Class Magistrate was dealing with twenty-four persons who had been tried by the Stationary Second Class Magistrate of Giddalore in Calendar Case No. 593 of 1937. The learned Sub-Magistrate found all the twenty-four accused persons guilty of rioting (section

(1) 1936 M.W.N. 213.

147, Indian Penal Code) wrongful confinement (section 341, Indian Penal Code) assault with intent to dishonour (section 355, Indian Penal Code) and simple hurt (section 323, Indian Penal Code) read with section 149, Indian Penal Code. He convicted them under those sections but, considering that they were persons who might properly be dealt with under section 562, Criminal Procedure Code, he submitted the case to the Sub-Divisional Magistrate under the provisions of section 562 (1) proviso. The learned First Class Magistrate, dealing with the case under the provisions of section 380, Criminal Procedure Code, convicted all the twenty-four accused of rioting (section 147, Indian Penal Code) and sentenced them for that offence to pay a fine of Rs. 20 each; and accused Nos. 6 and 24 he convicted also under section 355, Indian Penal Code, and sentenced them to pay a fine of Rs. 25 each for that offence. The learned Sub-Divisional Magistrate did not say what he proposed to do with regard to the other convictions which had already been recorded by the Sub-Magistrate. But that is a matter which is not before us now and we do not propose to interfere with it.

The appeal presented to the learned Sessions Judge was on behalf of the twenty-third accused only. He had been convicted only of rioting (section 147, Indian Penal Code) and sentenced to pay a fine of Rs. 20. Under section 413, Criminal Procedure Code, the twenty-third accused would ordinarily have no right of appeal but the appeal was filed on his behalf under the provisions of section 415-A. It was alleged that the sixth and twenty-fourth accused, having been sentenced to pay two fines of Rs. 20 and Rs. 25, had a right of appeal under section 415-A and therefore the twenty-third accused having been convicted at

VENKATA-RAMAYYA, *In re.*

BURN J.

the same trial had also a right of appeal. The learned Sessions Judge has held that none of the twenty-four accused had any right of appeal in this case. He therefore rejected the appeal referring the twenty-third accused to an application for revision to this Court if so advised. The twenty-third accused has applied for revision of the order of the learned Sessions Judge.

The only authority of this Court quoted by learned Counsel for the petitioner is the decision of KING J. in the case of *Public Prosecutor, Madras* v. *Dasa Pai*(1). That was a case in which on a summary trial a First Class Bench of Magistrates had sentenced one of several persons convicted under the Gaming Act to pay a fine of Rs. 25 for an offence under section 9 and a fine of Rs. 50 for an offence under section 8. The persons convicted appealed to the Sessions Judge and he held that an appeal lay. The learned Public Prosecutor filed a revision petition against that decision and KING J. held that the learned Sessions Judge's decision was correct.

With respect we think that the decision of KING J. in that case was wrong. The matter depends upon the interpretation of section 415, Criminal Procedure Code, which says:

> "An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace."

It is contended on behalf of the petitioner that the learned Sub-Divisional Magistrate when he imposed upon the sixth and twenty-fourth accused two

(1) 1936 M.W.N. 213.

fines of Rs. 20 and Rs. 25 respectively was passing a sentence combining two of the punishments referred to in section 413. Now section 413 is 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 rupees fifty only."

There are two punishments here mentioned : (i) imprisonment and (ii) fine. But it is pointed out that in section 415 there is a reference to "any two or more" of the punishments mentioned in section 413 or section 414 and since in section 413 there are only two kinds of punishments mentioned and in section 414 there is one kind of punishment mentioned, namely, the punishment of fine, it is argued that if there are two or more sentences of fine this must be regarded as a sentence combining two of the punishments mentioned in section 413 or section 414. We are unable to accept this argument. We are of opinion that section 415 when it refers to two or more punishments is referring to two or more punishments of different kinds. The history of the Code is, we think, important in this connection and makes the matter clear. When section 415 was first enacted there were three kinds of punishments provided in both sections 413 and 414, namely, in section 413 a sentence of imprisonment not exceeding one month only, fine not exceeding Rs. 50 only or whipping only, and in section 414 a sentence of imprisonment not exceeding three months only, fine not exceeding two hundred rupees only or whipping only. In these circumstances, although it might possibly be argued that section 415 was to some extent superfluous, it could not be argued that it had no meaning. It was clear that it meant to

VENKATA-RAMAYYA, *In re.*

BURN J.

refer to sentences in which two or more different kinds of punishments referred to in section 413 and section 414 were combined. After the modifications in section 413 and section 414 introduced in 1923 it is impossible to attribute any real meaning to the phrase "any two or more of the punishments therein mentioned" in section 415 so far as it relates at any rate to section 414. It is clear, we think, as EDGLEY J. stated in the case of *Kali Charan* v. *Adhar Mandal*(1), that section 415 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. Learned Counsel for the petitioner has relied upon two decisions of the Oudh Chief Court reported as *Kandhai* v. *King-Emperor*(2) and *Makrand Singh* v. *Ganga*(3) and also upon the decision of CUMING J. in the case reported as *Akabbar Ali* v. *Emperor*(4). With respect we are not able to agree with those decisions. We prefer the opinion of MITTER J. in the case reported as *Nawabali Haji* v. *Jainab Bibi*(5) and the view of the learned CHIEF JUSTICE of Bombay and CRUMP J. in the case reported as *Shidlingappa* v. *Emperor*(6). Our decision can be rested upon the words of section 415 itself. It is not possible in this case to say that the learned Sub-Divisional Magistrate has passed any sentence by which any two or more of the punishments mentioned in section 413 are *combined*. The learned Sub-Divisional Magistrate did not combine any of the punishments in either of the sentences that he imposed. He imposed two separate sentences of fine. There is no combination of punishments in one sentence within the meaning of

(1) (1938) 43 C.W.N. 360.
(2) (1931) I.L.R. 7 Luck. 501.
(3) (1937) I.L.R. 13 Luck. 618.
(4) (1931) I.L.R. 59 Cal. 19.
(5) (1932) I.L.R. 59 Cal. 1131.
(6) A.I.R. 1926 Bom. 416.

section 415, Criminal Procedure Code. We think therefore that the learned Sessions Judge was correct and that this application for revision must be dismissed.

Learned Counsel for the petitioner has attempted to persuade us to interfere in revision finally against the order of the learned Sub-Divisional Magistrate. That is not the prayer in the petition which is for revision of the order passed by the learned Sessions Judge. But in so far as this is concerned we observe that the grounds taken for saying that the learned Sub-Divisional Magistrate was wrong in convicting the twenty-third accused (present petitioner) are all grounds of fact and not connected with any question of law. Learned Counsel points out that the Sub-Magistrate who tried the case recommended that all the accused should be dealt with under section 562, Criminal Procedure Code. But the learned Sub-Divisional Magistrate has given reasons for not dealing with them under that section and we do not think that there are sufficient grounds for interfering with the exercise of his discretion. We cannot interfere with the conviction on the facts. The twenty-third accused was convicted of rioting and let off with a fine of Rs. 20 which cannot be said to be excessive.

This petition is therefore dismissed.

V.V.C.