

1891
December 11.

REVISIONAL CRIMINAL.

Before Mr. Justice Know.

QUEEN-EMPRESS *v.* SUDRA.

Criminal Procedure Code, s. 337—Pardon—Trial of person who having accepted a pardon has not fulfilled the conditions on which it was offered.

Where a pardon has been tendered to any person in connection with an offence, he should not be tried for any alleged breach of the conditions of his pardon or for any offence connected with that for which he has received pardon until the trial of the principal offence, and of any offence connected therewith, has been completed.

THIS was a reference under s. 437 of the Code of Criminal Procedure 1882 made by the Sessions Judge of Jhansi. The facts of the case sufficiently appear from the referring order, which is as follows :—

“ I have, on the trial of *Queen-Empress v. Nanhe, Muthu and Musammat Sukhrani*, charged under s. 302, Indian Penal Code, with the murder of Mohan Lal at Daun, on the 2nd of June last, examined the record of the case of *Queen-Empress v. Sudra*, committed for trial on the charge under s. 411, Indian Penal Code, of having received or retained possession of a bond stolen from Mohan Lal in connection with the murder, and find that on the 20th of June, Mr. Sturt tendered a pardon to Sudra, under s. 337, Criminal Procedure Code (not s. 327, Criminal Procedure Code, as stated), on the condition that he made a ‘full confession of the whole of the circumstances within his knowledge relating to the murder of Mohan Lal.’ Notwithstanding this the Magistrate has committed Sudra for trial. I may remark that I can nowhere find any record of Sudra’s having accepted the conditional tender of pardon, but as he was subsequently examined as a witness against Brijlal and Badli, charged also with the murder of Mohan Lal, it must be assumed that Sudra did accept it.

“ S. 337 Criminal Procedure Code provides that every person accepting a pardon under this section shall be examined as a witness in the case, although it was not when the charges against Nanhe, &c., were under inquiry by the Magistrate that the tender of pardon was made and accepted; it was in the case of the offence of murder-

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ing Mohan Lal that it was made. So that Sudra was in the position of a witness, and the tender of conditional pardon still subsisted while the case relating to the murder of Mohan Lal was pending. His commitment on the charge was therefore illegal, and in my opinion the record of his case must be submitted to the High Court that the commitment may be quashed. I may add that as the trial of Nanhe, &c., on the charge of murder has now been concluded, there is no objection to the Magistrate now acting in accordance with the provisions of s. 339, Criminal Procedure Code. Recently I submitted a somewhat similar case for the orders of the High Court, and the commitment was quashed; but before submitting the record in the present case, a copy of this proceeding will be sent to the Magistrate for any explanation he may desire to offer. The explanation should be submitted to this Court within four days.

* * * * *

“The Deputy Magistrate has returned an explanation in reference to the above order, but, so far as it is intelligible, I do not think it affords any reason for not sending up the records relating to the case of Sudra for the orders of the High Court. What is important to bear in mind is that the charge against Sudra is of having received or retained a bond or bonds supposed to have been stolen from Mohan Lal at or about the time of his murder. The Deputy Magistrate, when tendering the pardon, gives as his reason for doing so that ‘from the facts of the money bonds found in his possession having been the property of Mohan Lal, the murdered man, and known to have been in his possession at the time of his murder, there is strong presumption that the accused was himself directly or indirectly concerned in the murder, or at least of his being privy to it.’ I think the pardon must necessarily be held to include a pardon of whatever offence the accused may have committed arising out of, or even in any way connected with, Mohan Lal’s murder. The fact that the record of the case against Sudra, who was mixed up only with the charge of murder against Brijlal and Badli, who were not committed for trial, was different from the record of the case against Nanhe, &c., does not prevent the whole of

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the proceedings being in the case of the murder of Mohan Lal. In my opinion the Deputy Magistrate had no authority to withdraw the pardon tendered to Sudra so long as the charge of murder against any person was pending. I accordingly submit all the records of the two cases for such orders as the Hon'ble High Court may consider necessary."

On this reference the following order was made by KNOX, J.:—

One Sudra received from the Deputy Commissioner of Jhansi an offer of pardon in the case of a murder committed upon the person of one Mohan Lal on the 2nd of June 1891. The tender of pardon was made to him with the view of obtaining his evidence, and it was made presumably on the usual conditions. Apparently the tender was accepted, and in a trial in connection with this murder held against two persons, Sudra was examined as a witness. It further appears that it was found necessary to charge other persons, namely, Nanhé, Muthu and Musammat Sukhrani, with the same offence of murder committed upon Mohan Lal. Before the case against these latter persons had been heard, Sudra, who had originally been arrested on a charge under s. 411, Indian Penal Code, was committed for trial to the Sessions Judge of Jhansi. The Sessions Judge of Jhansi has referred the commitment to this Court with a view of its being quashed, and the ground upon which he refers it is that until Sudra had been examined as a witness in the whole case or cases connected with the murder in respect of which tender of pardon had been made to him, he could not be tried for the offence in respect of which the pardon was tendered, or for any other offence of which he appears to have been guilty in connection with the same matter. The whole question turns upon the interpretation which is to be placed upon the words in s. 337, Criminal Procedure Code, namely, "every person accepting a tender under this section shall be examined as a witness in the case." It is, in my opinion, the intention of the law that a person to whom a tender of pardon has been made in connection with the offence should not be tried for an alleged breach of the conditions upon which the pardon was tendered until the original case has been fully heard

and determined. There may arise cases in which owing to the absconding of offenders the trial at an early date of an approver who had not complied with the conditions on which the tender was made appears necessary or expedient, and I am not prepared to say that in such cases the result of the trial of the principal is always to be waited for. The point does not arise for determination, and I do not determine it. But where, as in the present instance, no such difficulty occurred, the provisions of s. 337 of the Criminal Procedure Code should have been strictly complied with, and in every case connected with the offence, namely, the murder of Mohan Lal, Sudra should have been examined as a witness, and until he had been so examined, his trial for any offence in connection with that murder should not have taken place. I accordingly quash the commitment and return the record. The District Magistrate of Jhansi can of course take any steps open to him in law for the further trial of Sudra if such trial appear necessary in the interests of public justice.

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APPELLATE CIVIL.

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January 5.

Before Mr. Justice Mahmood.

RAM SUKH DAS AND ANOTHER (DEFENDANTS) v. TOTA RAM (PLAINTIFF)*

Cross-decrees—Set-off - Civil Procedure Code, s. 246.

Where a decree-holder holds a decree against several persons jointly, one of whom holds a decree against him singly, both decrees being executable in the same Court, it is competent to the holder of the joint decree, under the provisions of s. 246 of the Code of Civil Procedure, to plead such decree in answer to an application for execution of the decree against him singly.

THE facts of this case sufficiently appear from the judgment of Mahmood, J.

Mr. *D. Banerji*, for the appellants.

Mr. *Niblett*, for the respondent.

* Second Appeal No. 203 of 1891, from a decree of Babu Abinash Chandar Banerji, Subordinate Judge of Agra, dated the 18th December 1880, reversing a decree of Babu Baij Nath Prasad, Munsif of Mahaban, dated the 14th June 1890.