

APPELLATE CRIMINAL.

1893
April 29th.

*Before Mr. Justice Aikman.*QUEEN—EMPRESS *v.* MAKHAN.*Act XVI of 1860, s. 411—Dishonest retention of stolen property—Property belonging to different owners—Separate convictions.*

Where a person was found in possession of stolen property identified as belonging to different owners, but it did not appear that he had received such property at different times. *Held* that he could not properly be tried and convicted under s. 411 of the Indian Penal Code, separately in respect of the property identified by each owner. *Ishun Muchi v. The Queen-Empress* (1) approved.

Makhan was committed to the Sessions Court at Meerut, charged with an offence under s. 411 read with s. 75 of the Indian Penal Code, and was convicted under s. 411 and sentenced by the Sessions Judge to two years' rigorous imprisonment, including three months solitary confinement.

It was proved that a theft had occurred in the house of the complainants, Bihari Lal and Sri Ram, and that subsequently, on Makhan's house being searched by the police, property belonging to these complainants and other persons was found there.

In respect of one piece of the stolen property so found, namely, a shawl belonging to another complainant, Makhan was tried and convicted by a Magistrate and was sentenced to nine months' rigorous imprisonment, which imprisonment he was undergoing at the time of the Sessions trial.

In the present case Makhan was charged with the possession of other property found on the same occasion in his house.

The prisoner appealed to the High Court on the ground, which he had pleaded in the Court below, but had failed to substantiate by any evidence, that the property in respect of the possession of which he had been convicted belonged to him.

The Government Pleader (*Munshi Ram Pr. sad*), for the Crown,

The appellant was not represented.

1893

QUEEN-
EMPRESS
v.
MAKHAN.

AIKMAN, J.—The prisoner Makhan appeals against his conviction by the learned Sessions Judge of Meerut for an offence punishable under s. 411, Indian Penal Code. It appears from the record that on the 5th of September 1892, the prisoner's house was searched by the police in the presence of witnesses and certain property found to have been stolen was found in his possession. Amongst that stolen property was a shawl. For the dishonest possession of that shawl the prisoner was convicted by a Magistrate of the first class on the 7th of November 1892, and sentenced to nine months' rigorous imprisonment under the provisions of s. 411, Indian Penal Code, which imprisonment he is now undergoing. The conviction against which he now appeals is in respect of the dishonest possession of certain other stolen property belonging to a different complainant which was found in his possession at the same time as the shawl. In my opinion this second conviction cannot be sustained. The mere fact that property stolen on two different occasions from different persons is found at one and the same time in the possession of an accused person is not of itself sufficient to prove that that accused person has committed two different offences under s. 411, Indian Penal Code, as it is quite possible that the property, though stolen on two different occasions, may have been received from the same thief at one time, *Vide Isham Muchi v. The Queen-Empress* (1). I am therefore constrained to allow this appeal. I set aside the conviction of and the sentence passed on Makhan by the Sessions Judge on the 22nd of February 1893.

REVISIONAL CIVIL.

Before Mr. Justice Aikman.

AJUDHIA PRASAD AND ANOTHER (APPLICANTS) v. NAND LAL SINGH AND OTHERS (OPPOSITE PARTIES).*

Civil Procedure Code, s. 311—Execution of decree—“Decree-holder.”

The term “decree-holder” in s. 311 of the Code of Civil Procedure is not limited to the decree-holder who instituted the execution-proceedings, but may include a

* Application No. 54 of 1892, under s. 622 of the Code of Civil Procedure, for revision of an order of H. F. Evans, Esq., District Judge of Shāhjahānpur, dated the 13th July 1892.