

Act, 1877, applies, and, more than three years having elapsed after the 5th of June 1838 before the present application was made, the application was time-barred. We dismiss the appeal with costs.

Appeal dismissed.

1896

 DESRA
 SINGH
 v.
 KARAM
 KHAN.

 1896
 August 2

REVISIONAL CRIMINAL.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Aikman.

MANJHLI (APPLICANT) v. MANIK CHAND AND ANOTHER (OPPOSITE PARTY).*

Criminal Procedure Code, section 560—Compensation for frivolous and vexatious complaint—Order in the alternative for imprisonment.

It is not competent to a court in awarding compensation under section 560 of the Code of Civil Procedure against a complainant for making a frivolous and vexatious complaint to order at the same time that in default of payment of the compensation the person against whom the order is made suffer imprisonment. *Queen-Empress v. Punna* (1) approved.

THIS was a reference under section 438 of the Code of Criminal Procedure made by the Sessions Judge of Jhānsi. The facts of the case were as follows:—

A Magistrate of the first class, after he had tried a case in which one Musammat Manjhli was complainant and Manik Chand and Musammat Amano were accused, discharged the accused, and, being satisfied that the accusation against them was false and malicious, directed Musammat Manjhli to pay Rs. 50 to Manik Chand and Rs. 10 to Musammat Amano. He further directed that these amounts should be levied as fines, and if they could not be realised, that Musammat Manjhli shall suffer 30 days' simple imprisonment.

The Sessions Judge, before whom this order was brought on an application in revision, took exception to the order on the ground that Magistrate in passing it had not complied with the provisions of clause (a) or of clause (b) of section 560 of the Code of Criminal

* Criminal Revision No. 256 of 1896, from an order of Pandit Jawahir Lal, first class Magistrate of Jalaun, dated the 6th March 1896.

1896

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Procedure; and, further, upon the ground that it was not competent to the Magistrate to pass an order for the imprisonment of the complainant until some attempt had been made to recover the amount awarded as compensation. The Judge referred to *Queen-Empress v. Punna* (1) and *Ram Jeewan Koormi v. Doorga Charn Sadukhan* (2).

The reference was laid for disposal before a single Judge, who being inclined to dissent from the ruling in *Queen-Empress v. Punna* (1) referred the case to a Division Bench. The following order was passed.

EDGE, C. J., and AIKMAN, J.—We agree with the decision in *Queen-Empress v. Punna* (1) and, on the recommendation of the Sessions Judge, set aside the order awarding compensation and in default imprisonment.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Aikman.

1896.
August 26.

BRIJ BASI (APPLICANT) v. THE QUEEN-EMPRESS (OPPOSITE PARTY).
Act No. XLV of 1860 (Indian Penal Code), section 451—House trespass with intent to commit adultery—Evidence.

To sustain a conviction under section 451 of the Indian Penal Code for the offence of house trespass with intent to commit an offence, the prospective offence being adultery, it is necessary to show that there has been no consent or connivance on the part of the husband of the woman the intent to commit adultery with whom is charged against the accused.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. C. Dillon for the applicant.

The Government pleader, Munshi Ram Prasad, for the Crown.

EDGE, C. J. and AIKMAN, J.—Brij Basi was charged before a Magistrate with having committed the offence of lurking house trespass by night with intent to commit theft punishable under section 457 of the Indian Penal Code. The Magistrate, finding on the evidence that Brij Basi had no intent to commit theft altered the charge to one of house trespass in order to the committing of an offence punishable with imprisonment, specifying

* Criminal Revision No. 383 of 1896.

(1) I. L. R., 18 All., 96.

(2) I. L. R., 21 Cal., 979.