

1903

EMPEROR
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offence of kidnapping, at least of the offence of abetting the kidnapping, and as the kidnapping was made with intent to compel the girl to marry against her will, the appellant has been rightly convicted of abetment of an offence punishable under section 366. Accordingly I dismiss his appeal.

I desire to mention that this appeal was laid before my brother Banerji, and that he had prepared a judgment, but was unfortunately unable to deliver it owing to indisposition. The appeal therefore came for disposal before me as vacation Judge. I have arrived at the same conclusion as did my learned brother as to the propriety of the conviction of the appellant under section 107 of the Code, and I have in my judgment adopted with but slight modification and additions the language of the judgment prepared by him.

1903
November 3.

REVISIONAL CRIMINAL.

Before Mr. Justice Know and Mr. Justice Aikman.

EMPEROR v. RAJA RAM AND ANOTHER.*

Criminal Procedure Code, section 514—Security to keep the peace—Forfeiture of recognizance—Criminal Procedure Code, section 107; schedule V, No. 10.

Held that the mere fact that no immediate action under section 514 of the Code of Criminal Procedure is taken against a person under recognizances to keep the peace, or against his surety, on the conviction of the former of an offence involving a breach of the peace is no bar to the taking of such proceedings at a subsequent time, as, for example, after the time for appealing has expired, or after an appeal by the principal has been dismissed. *In re Ram Chunder Lalla* (1) and *In re Parbutti Churn Bose* (2) dissented from.

ON the 11th of July, 1901, Raja Ram was called upon to execute a bond with one surety to keep the peace for a period of one year. On the following day he executed the bond in the form given in Schedule V, No. 10, of the Code of Criminal Procedure. Before the year expired, namely, on the 5th of June, 1902, Raja Ram was convicted of an offence under section 353 of the Indian Penal Code, and sentenced to pay a fine of Rs. 51. Raja Ram appealed, and the conviction and sentence were affirmed on the 5th of July, 1902. On the 20th

* Criminal Reference No. 451 of 1903.

(1) (1877) 1, C. L. R., 134.

(2) (1878) 2, C. L. R., 406.

of August, 1902, proceedings were instituted under section 514 of the Code of Criminal Procedure. On the 18th of November, 1902, an order was passed by a Magistrate of the first class declaring the bonds given by Raja Ram and his surety, Basdeo, to be forfeited, and calling upon the former to pay Rs. 200, and the latter Rs. 100. On the 5th of May, 1903, this order was upheld in appeal by the District Magistrate. The Sessions Judge of Mirzapur reported the proceedings for the orders of the High Court under section 438 of the Code of Criminal Procedure, being of opinion that proceedings under section 514 of the Code could not be taken otherwise than immediately following upon the conviction of the person from whom security was taken.

The Assistant Government Advocate (Mr. *W. K. Porter*), for the Crown.

KNOX and AIKMAN, JJ.—The Sessions Judge of Mirzapur has called the attention of this Court to an order of the District Magistrate of Mirzapur, dated the 5th of May, 1903, confirming on appeal an order passed by a Magistrate of the first class under the provisions of section 514 of the Code of Criminal Procedure, and dated the 18th of November 1902. By that order a bond taken under section 107 of the Code of Criminal Procedure from one Raja Ram and a security taken from Basdeo as his surety were declared forfeited, and Raja Ram was called upon to pay the penalty of Rs. 200 entered in the bond and Basdeo the mitigated penalty of Rs. 100. On looking into the record we find that on the 11th of July, 1901, Raja Ram was called upon to execute a bond with a security to keep the peace for the space of one year. On the following day he executed the bond in the form given in Schedule V, No. 10 of the Code of Criminal Procedure. Before the year expired, namely, on the 5th of June, 1902, Raja Ram was convicted of an offence under section 353 of the Indian Penal Code and sentenced to pay a fine of Rs. 51. Raja Ram appealed, and the conviction and sentence were affirmed on the 5th of July, 1902. On the 20th of August, 1902, proceedings were instituted under section 514 of the Code of Criminal Procedure, with the result stated above. The learned Sessions Judge having had his

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attention called to the ruling *In re Ram Chander Lalla* (1) considered it expedient to refer these proceedings to this Court. In addition to the case which has been cited by the learned Sessions Judge, there is another similar case to be found, *In re Parbutti Churn Bose* (2). In both these cases it was laid down that when the Magistrate deciding a case of an offence attended with violence is cognisant of the fact that the person convicted is under a recognisance to keep the peace, and does not proceed at once to take steps to forfeit the recognisance, he cannot do so subsequently. With all deference to the learned Judges who decided these cases, we find ourselves unable to follow them. We find nothing in the language either of the Code of Criminal Procedure of 1872 or in the wording of the present Code which lays down any such limitation. A Magistrate who passes an appealable sentence on a conviction for a breach of the peace may very well wait until the period of the appeal has expired, or, if an appeal is filed, till it is decided, before he proceeds to take action under section 514. Our attention has not been called in this case to any paper on the record which shows that the Magistrate who decided the case on the 5th of June, 1902, knew of the recognisance to keep the peace which had been entered into by Raja Ram in compliance with an order of his predecessor. Cases may also occur in which a breach of the peace has been committed and the parties acting privately may compound the offence; this would not prevent the District Magistrate or a Magistrate of the first class, if he considered it expedient in the interests of public security, from taking steps under section 514 of the Code of Criminal Procedure. We see no cause for interfering and direct the record to be returned.

(1) (1877) 1, C. L. R., 134.

(2) (1878) 3, C. L. R., 406.