

1911

KURA SINGH
v.
CHHATRU.

brought in the Revenue Court would or would not have the effect of *res judicata*. We think the court of first instance was bound to follow the procedure laid down in section 202, and this must now be done. We accordingly discharge the decrees of both the courts below and remand the case to the court of first instance with directions to re-admit the suit under its original number in the register and adopt the procedure laid down in section 202 of the Agra Tenancy Act. The appellant will have the costs of this appeal. All other costs will follow the event.

Appeal allowed.

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March, 2.

REVISIONAL CRIMINAL.

Before Mr. Justice Tudball.

EMPEROR v. AGAM AND OTHERS.*

Criminal Procedure Code, sections 403, 415—Appeal—Sentence.

Where certain persons were tried by a Magistrate of the first class, convicted of an offence under section 325, Indian Penal Code, and sentenced to a day's imprisonment and a fine of fifty rupees. *Held* that the circumstance that the accused were in fact neither sent to jail nor actually imprisoned would not prevent their being entitled to appeal to the Sessions Judge.

The applicants in this case were tried by a Magistrate of the first class, convicted of an offence under section 325 of the Indian Penal Code, and sentenced to a day's simple imprisonment each and to a fine of Rs. 50 each, in default of which they were to suffer a month's farther imprisonment. In addition they were bound over to keep the peace. They appealed to the Sessions Judge, who, however, held that, inasmuch as in fact the appellants had neither been sent to jail nor actually imprisoned, no appeal would lie. The appellants then applied in revision to the High Court.

Mr. G. P. Boys, for the applicants.

The Assistant Government Advocate (*Mr. R. Malcomson*), for the Crown.

TUDBALL, J.—This is an application in revision against the decision of the Sessions Judge of Benares, made on the 12th of December, 1910. The applicants were tried by a Magistrate of

*Criminal Revision No. 700 of 1910 from an order of G. A. Paterson, District Judge of Benares, dated the 12th of December, 1910.

the first class ; convicted of an offence under section 325 of the Indian Penal Code and sentenced to a day's simple imprisonment each and also to a fine of Rs. 50 each, and in default of payment of fine they were to suffer a month's further imprisonment. In addition to this they were bound over to keep the peace. The learned Sessions Judge has held that, though the applicants were sentenced to one day's imprisonment, as a matter of fact they were neither sent to jail nor were they actually imprisoned, and that therefore there has been no such combination of the two classes of punishments mentioned in section 413 as is contemplated by the terms of section 415 of the Criminal Procedure Code. Section 308 of the Code distinctly lays down that any person convicted on a trial held by a Magistrate of the first class may appeal to the Court of Session. Section 413 is an exception to the general rule laid down in section 408. It is laid down in that section that "notwithstanding anything hereinbefore contained there shall be no appeal by a convicted person in cases in which a Magistrate of the first class passes a sentence of imprisonment not exceeding one month only 'or' fine not exceeding fifty rupees only, 'or' whipping only." It is quite clear that the present case does not fall within the exceptions set forth in section 413. Section 415 is explanatory, and apparently was entered in the Code to remove all possible doubts which might arise in the cases considered therein. It clearly lays down that an appeal may be brought against any sentence referred to in section 413 in which any two or more of the punishments therein mentioned are combined. It is quite clear that in the present case there has been a combination of the sentences of imprisonment and fine. It is immaterial for the purposes of that section whether the applicants actually suffered imprisonment in jail or not. The learned Sessions Judge is clearly wrong in the view which he has taken. I set aside his order. The appeal lies to his court. He must hear and decide it according to law.

Order set aside.

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EMPEROR
v.
ALAM.