

REVISIONAL CRIMINAL.

1913

January, 31.

Before Mr. Justice Tudball.

EMPEROR v. DINA NATH AND ANOTHER.*

Act No. VI of 1882 (Indian Companies Act), section 74—Penalty—Criminal Procedure Code, section 260—Summary jurisdiction—Power to try summarily offences under the Indian Companies Act.

Held that there is nothing in law to prevent a Magistrate from trying summarily offences under the Indian Companies Act, 1882.

Held also, that the penalty provided by section 74 of the Indian Companies Act, 1882, is a fixed and not a maximum penalty. *Queen Empress v. Moore* (1) referred to.

Dina Nath, Kashi Ram, Hazari Lal and Devi Dat were directors of a Company known as the Union Indian Sugar Mills Company, Limited, Cawnpore. On the complaint of the Registrar of Joint Stock Companies these four persons were placed on their trial on a charge under section 74 of the Indian Companies Act, 1882, no balance sheet having been filed with the Registrar within the time fixed or within the extension allowed by him; the offence being that of knowingly and wilfully authorizing or permitting the default. The case was tried summarily by a Magistrate of the first class, who acquitted Devi Dat and imposed a penalty of Rs. 50 on each of the other directors. The three directors who had been convicted applied in revision to the High Court.

Mr. W. Wallach and Babu Vikramajit Singh, for the applicants.

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

TUDBALL J :—This matter and Revisions Nos. 1012 and 1013 of 1912, arise out of the following circumstances :—

The three applicants Lala Dina Nath, L. Kashi Ram and L. Hazari Lal, and one Lala Devi Dat are the directors of the Union Indian Sugar Mills Company, Ltd., Cawnpore. They were placed upon their trial on the complaint of the Registrar of Joint Stock Companies on a charge under section 74 of the Companies Act, VI of 1882, no balance sheet having been filed with the Registrar within the time fixed or within the extension allowed by him; the

* Criminal Revision, No. 1011 of 1912 from an order of Austin Kendall, Sessions Judge of Cawnpore, dated the 25th of November, 1912.

(1) (1893) I, L, R., 20 Calc., 676.

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offence being that of knowingly and wilfully authorizing or permitting the default mentioned above. The case was tried summarily by a Magistrate of the first class, who acquitted Lala Devi Dat and imposed a penalty of Rs. 50 on each of the other directors. The three latter have come here in revision. A great deal has been said about the merits of the case, but in view of the order which I am going to pass I abstain from making any remarks thereon.

It is urged that the Magistrate had no power to try the case summarily. With this I cannot agree. Under section 260 of the Code of Criminal Procedure a Magistrate has power to try summarily all offences not punishable with death, transportation or imprisonment for a term exceeding six months. The word 'offence' is defined in the Code as "any act or omission made punishable by any law for the time being in force." Section 5 of the Code lays down that "All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions laid down in the Code of Criminal Procedure." Clause (2) of the section lays down that "All offences under any other law shall be similarly dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or the place of investigating, inquiring into, trying or otherwise dealing with such offences." There is nothing in the Companies Act which lays down that a Magistrate having summary powers shall not try an offence under that Act in a summary manner. It is true that under section 252 all offences under the Act may be tried by any Magistrate of the first class unless the period of imprisonment to which the offender is liable exceeds that which such officer is competent to award under the law for the time being in force in the place where he is employed. When the period of imprisonment provided by the Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial to the Court of Session. There is nothing in this portion of the section which takes away the Magistrate's power to try summarily cases within his jurisdiction, nor does the second clause of the section take away any such power. As a matter of fact a Presidency Magistrate has power to try all cases under the Act in a summary way irrespective of the sentence he may impose.

Section 262 of the Code of Criminal Procedure lays down the limit to the sentence of imprisonment which may be awarded at a summary trial. There is nothing in chapter XXII which limits the amount of fine which may be imposed in a summary trial; the sections which deal with appeals in the Code, however, show that a sentence of fine exceeding Rs. 50 is an appealable sentence. But though it cannot be said that the Magistrate has been guilty of any illegality in trying the case summarily, there are very good grounds why he should not have done so. In the first place the penalty which may be imposed under section 74 is one of Rs. 1,000 *neither more nor less*. An examination of the Act would show that everywhere (with two exceptions) where the Act lays down a penalty for an offence in the shape of fine it clearly lays down a maximum, which is not to be exceeded, and sections 25, 55, 57 and 66 are all instances of this. In section 66 (1) any Limited Company which does not paint or affix its name in the manner directed by the Act, is held liable to a penalty not exceeding Rs. 50. But in the last clause of the same section it is distinctly laid down that the Director, Manager or Officer of the Company, who is guilty of the act mentioned in this clause, shall be liable to a penalty of Rs. 1,000. Similarly in section 74 it is laid down that a Director or Manager of a Company shall be liable to a penalty of Rs. 1,000. If the Legislature had intended that in these two cases there should be a maximum penalty and not a fixed penalty, it would have used the same language as it has used in other sections of the Act, just in the same way as in the Indian Penal Code it has been laid down that sentence shall not be more or less than a fixed amount, clearly showing that the court should exercise its discretion as to the sentence to be imposed. The only decision which is on all fours with the present case is the case of *Queen Empress v. Moore* (1). That was under section 35 of the Companies Act, which has since been repealed. That section ran as follows:—“If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who at the time when it is issued is the managing Director or Secretary or other principal officer of the Company, shall forfeit the sum of Rs. 500.” It was in that case held that the forfeiture was a penalty and that a forfeiture of Rs. 500 was

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the fixed penalty laid down by the Statute. It seems to me clear that the penalty laid down in section 74 is also a penalty fixed by Statute and the Magistrate was not competent to inflict any lesser penalty. If the Magistrate had inflicted this penalty, it is clear that the person convicted would have had a right of appeal. The case is one in which a great deal of correspondence has been put forward and is by no means of that simple character to which a summary trial is intended to be restricted. In deciding whether or not he will try a case summarily it is for the Magistrate to exercise a wise discretion and ordinarily he ought to restrict such trials to simple cases. In my opinion the present case was one in which, even if it had been tried summarily and a proper penalty imposed, an appeal would have been of very little use to the persons convicted, as a great mass of important evidence is not on this record. It seems to me essentially one of those cases which the Magistrate should have tried in an ordinary way, duly recording the evidence. The case has not been properly tried and ought to be tried *de novo*.

It is urged on behalf of Lala Devi Dat, who was acquitted by the Magistrate, that the order of acquittal should not be set aside, as the Magistrate has found that Devi Dat had done his best to bring about the filing of the balance sheet. This is really a point on the merits of the case. Without full evidence before me it is impossible to say whether Devi Dat is innocent or guilty, nor would it be right for me to express any opinion, especially as I am ordering a new trial. The case in my opinion has not been satisfactorily tried and ought to be tried *de novo*. I therefore set aside the convictions and sentences on Lala Dina Nath, Lala Kashi Ram and Lala Hazari Lal. I set aside the acquittal of Lala Devi Dat and order the case to be tried *de novo* by some Magistrate, other than the Magistrate who has decided the case, to whom the District Magistrate may think it fit to send it.

Order set aside.