

Before Mr. Justice Piggott.
 EMPEROR v. LAL SINGH.*

1916
 April, 10.

Criminal Procedure Code, sections 408 and 413—One of several co-accused in the same trial sentenced to one month's imprisonment, others to a longer period Appeal.

Held that the right of appeal exercisable by a person who has received an appealable sentence carries with it a right of appeal also by any other person convicted at the same trial, even though that particular person may have received a sentence which, if it stood alone, would not have been appealable.

THE facts of this case were as follows :—

On the 16th of November, 1915, a Magistrate of the first class convicted four persons on a charge framed under section 379 of the Indian Penal Code. Three of these accused he sentenced to undergo rigorous imprisonment for a period of three months each; but on one person, named Lal Singh, he passed a sentence of one month's rigorous imprisonment only. The three convicts who had received the longer sentence, a sentence in itself on the face of it appealable, exercised their right of appeal to the Sessions Judge. On the 3rd of December, 1915, the Sessions Judge quashed the convictions on the merits and ordered the release of the three convict appellants.

On the 13th of December, 1915, Lal Singh filed in the court of the Sessions Judge an application for revision against his conviction and sentence. This application was rejected, and he thereupon preferred the present application for revision to the High Court.

Babu *Satya Chandra Mukerji*, for the applicant.

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

PIGGOTT, J.—The following are the essential facts out of which this application arises. On the 16th of November, 1915; a Magistrate of the first class convicted four persons on a charge framed under section 379 of the Indian Penal Code. Three of these accused he sentenced to undergo rigorous imprisonment for a period of three months each; but on one person, named Lal Singh, he passed a sentence of one month's rigorous imprisonment only. The three convicts who had received the longer sentence, a sentence in itself on the face of it appealable, exercised their

* Criminal Revision No. 133 of 1916, from an order of Banka Behari Lal, Additional Sessions Judge of Meerut, dated the 14th of January, 1916.

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right of appeal to the Sessions Judge. On the 3rd of December, 1915, the Sessions Judge quashed the convictions on the merits and ordered the release of the three convict appellants. Presumably information of the success of this appeal reached the convict Lal Singh and stirred him up to make an effort on his own behalf. It was not, however, till the 13th of December, 1915, that he managed to file in the court of the Sessions Judge a petition which on the face of it purports to be a petition of revision against his conviction and sentence. The Sessions Judge on the 14th of January, 1916, dismissed this application, giving as his reasons for doing so that it had been filed only three days before the expiry of the sentence passed upon Lal Singh and that the latter must be taken to have acquiesced in the sentence. He noted on the petition also that, the sentence having now been fully served, it did not appear that any adequate purpose would be served by invoking the interference of this court in the exercise of its revisional jurisdiction. Lal Singh now applies in revision to this Court against the order of the Sessions Judge. It seems clear from an inspection of the record that, if the Sessions Judge was right in acquitting the three co-accused, then Lal Singh was also entitled to an acquittal on the merits. Taking a broad view of the case, I might be content to dispose of it by saying that the applicant appears to be entitled in justice to an order of acquittal, and the fact of his having served his sentence does not necessarily in a case like the present make the interference of this Court futile. In view of the provisions of section 75 of the Indian Penal Code, to say nothing of other provisions of the law, it is a serious matter for an innocent man to have a conviction under section 379 of the Indian Penal Code, recorded against him and standing unreversed. I have really said enough to dispose of this application; but incidentally a question of considerable importance has been discussed in respect to which I think it worth while to record my opinion. The question is whether Lal Singh had or had not a right of appeal to the Sessions Judge against his conviction and sentence. I am of opinion that he had such a right of appeal. He certainly had unless the right conferred by section 408, Criminal Procedure Code, is taken away in respect of this accused by the subsequent section 413. That section is

intended to restrict the right of appeal by the exclusion of petty cases. The important words are those which provide that "there shall be no appeal by a convicted person in cases in which a court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only." It would have been easy for the Legislature to say that no appeal shall lie by a convicted person "upon whom or in whose case" such minor sentence has been [passed. The wording of the section is certainly open to the interpretation that the Legislature intended that the right of appeal exercisable by a person who has received an appealable sentence should carry with it a right of appeal also by any other person convicted at the same trial, even though that particular person may have received a sentence which, if it stood alone, would not have been appealable. This view has been taken by the Judicial Commissioner's Court in Oudh, though there seems to be some authority to the contrary in the Bombay High Court. The question is clearly connected with one which has been raised as to the operation of proviso (b) to section 408, Criminal Procedure Code. I believe it now to be settled law in this Court that if an Assistant Sessions Judge, trying two or more persons jointly, passes in respect of one of those persons a sentence of imprisonment for a term exceeding four years, the appeal of all the persons convicted at the same trial will lie to the High Court, even though the sentence passed upon some of these persons is far below the limit laid down by the proviso. It is worth while to point out that a different interpretation of section 413, Criminal Procedure Code, would involve a certain anomaly which may best be illustrated by the facts of the present case. If the section in question were so interpreted as to deny to Lal Singh a right of appeal to the Sessions Judge, I think it would certainly have been the duty of the Sessions Judge, when he accepted the appeals of the three men convicted at the same trial, to have referred the case of Lal Singh at once to this Court in order that this Court might do justice in the exercise of its revisional jurisdiction. The interpretation which I would put upon section 413, Criminal Procedure Code, has therefore this advantage that it renders unnecessary the

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interference of this Court in cases like the present. I think therefore that Lal Singh had a right of appeal to the court of Session against his conviction and sentence in the present case. From one point of view it is a circumstance against the admission of the present application, that the applicant had a remedy by way of appeal. On the other hand, there is this consideration in the applicant's favour, that he did present his petition to the Sessions Judge before his sentence had expired and within the period of limitation prescribed for the presentation of a criminal appeal. The Sessions Judge might therefore have dealt with that petition as an appeal and exercised his powers so as to give prompt relief.

For the reasons stated I am disposed to accept this application and I do so accordingly. I set aside the conviction and sentence in this case and record an order acquitting Lal Singh of the offence charged. As the sentence has been served there is no necessity to pass any further order.

Application allowed.

APPELLATE CIVIL.

1916
 April, 5.

Before Mr. Justice Piggott and Mr. Justice Walsh.

UDHISHTER SINGH AND ANOTHER (DECREE-HOLDERS) v. KAUSILLA AND OTHERS
 (JUDGMENT-DEBTORS).*

Civil Procedure Code (1908), order XXXIV, rules 4 and 5—Mortgage—Preliminary decree in favour of puisne mortgagee allowing redemption of prior mortgage—Right of puisne mortgagee on redemption to a decree absolute for sale of the property comprised in both mortgages.

In a suit for sale by puisne mortgagees the preliminary decree gave the plaintiffs a right to redeem a prior mortgage covering other property as well as that included in the mortgage in suit. The preliminary decree did not, however, specify this property as property which the mortgagees plaintiffs were entitled, in the event of non-payment, to bring to sale.

Held, that the plaintiffs mortgagees, having paid the amount due on the prior mortgage, were entitled, notwithstanding this omission, to a final decree for sale of the property comprised in both mortgages.

THIS was a suit brought by the appellant for sale on a mortgage in his favour against the mortgagor as well as against a person named Tika Ram who held a prior mortgage over the properties

* Second Appeal No. 1844 of 1914, from a decree of H. E. Holmes, District Judge of Aligarh, dated the 28th of May, 1914, confirming a decree of Abdul Hasan, Assistant Judge of Aligarh, dated the 22nd of February, 1913.