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that such minor will be employed or used for any such purpose. No doubt Ewaz Ali was well aware of what was about to happen to the girl. She was to be made to resemble as far as possible a *jat* female, and to be used for the purpose of cheating other persons and obtaining money. That no doubt was unlawful, but for the purpose of the section the object must also be immoral. The point is covered by the decision of the Full Bench of this Court in *Empress of India* v. *Sri Lal* (1). There again a low caste girl, as in the present case, was falsely represented by certain persons, as being a member of a higher caste, and another member of such higher caste was induced thereby to take her in marriage and to pay money for her in the full belief that such representation was true. It was held by the Full Bench that the accused could not be convicted on these facts of offences under sections 372 and 373 of the Indian Penal Code. The decision covers the facts of the present case and I am bound to hold that Ewaz Ali committed no offence under section 372 or 373 of the Indian Penal Code. It is clear that he did not attempt to cheat Hira Lal, Shankaria and Musammat Surja.

Under these circumstances, I must allow the appeal of Ewaz Ali. I set aside his conviction and sentence and direct that he be forthwith released. The appeals of the other appellants are all dismissed.

Conviction of Ewaz Ali quashed.

REVISIONAL CRIMINAL.

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June, 29.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Piggott.

EMPEROR *v.* BATESHAR AND OTHERS.*

Accused summoned without the complainant being examined—Irregularity—Proceedings not vitiated—Hurt both simple and grievous—Cumulative sentences—Legality of.

The complainants made a complaint to the police to the effect that the accused beat them causing grievous hurt. The police did not send up the case and the complainants applied to the Magistrate, who sent for the police papers and summoned the accused without examining the complainants. On the date fixed the complainants were absent and the accused were discharged.

* Criminal Revision No. 341 of 1915, from an order of Mubarak Husain, Sessions Judge of Cawnpore, dated the 26th of April, 1915.

(1) (1880) I. L. R., 2 All, 694.

Later in the day the complainants appeared and explained their delay, and the Magistrate again gave them time to produce evidence. He summoned the accused, found them guilty and sentenced them to imprisonment. *Held* that the course the Magistrate adopted was irregular but did not vitiate the entire proceedings.

Held further, that where different persons are injured, grievous hurt being caused in one case and simple hurt in others, it is competent for the court to impose separate and accumulative sentences.

THE facts of this case are fully set out in the judgement.

Mr. *W. Wallach*, for the applicants.

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

RICHARDS, C. J., and PIGGOTT, J. :—This is an application in revision. The facts are briefly as follows :—A complaint was made to the police, in which the complainant complained that he and certain other persons had been beaten by the present applicants, and that one of them had suffered injuries amounting to grievous hurt. The police do not appear to have been very anxious to initiate proceedings. The result was that the complainant came before Mr. Williamson, a Magistrate of the first class, with what amounted to a "complaint," though no doubt it was to a certain extent also a complaint against the police for not moving in the matter. This was on the 8th of February. The Magistrate made an order in the following terms :—"Papers of the police investigation to be produced before me on the 16th of February. The complainants, if they wish to prosecute their case independently of the police, should produce evidence on that date and also summon the accused." This order was not regular. There was no objection of course to the Magistrate sending for the police papers. On the contrary it was a very correct thing for him to do ; but under section 200 of the Code of Criminal Procedure he ought *at once*, and before he summoned the accused, to have examined the complainant on oath. On the 16th of February, for some reason or other, the complainants did not turn up. The accused were in court and the Magistrate made an order of discharge under section 259 of the Code of Criminal Procedure. The very same day the complainants turned up and evidently explained to the learned Magistrate how it was that they were unable to be present in court. Thereupon the Magistrate made the following order :—"The applicants appeared after

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the rising of the court, having arrived by a late train. In view of the police report and the departure of the accused it will be sufficient to allow applicants so much grace as to give them an opportunity of showing under section 202 of the Code of Criminal Procedure, whether they can support their case by evidence. To February the 23rd for this purpose." This order is dated the 17th, although the corresponding vernacular order in the order sheet is dated the 16th. On the 23rd of February, the complainant and four witnesses were examined and process was ordered to issue for the accused. The proceedings against them began on the 8th of March. The Magistrate again on the 16th or 17th of February, in a lesser degree made the same mistake as he had made in the previous order. He did not *at once* examine the complainants on oath. It is contended in revision that the conduct of the Magistrate amounts to such an illegality that it vitiates the entire proceedings. It is admitted, however, that according to the rulings and practice of this Court an order of discharge is no bar to the court taking cognizance of the case upon a fresh complaint or a fresh police report, notwithstanding that the complaint or police report refers to the very same offence in respect of which the accused had previously been discharged. It follows from this that if the court had never made the order, dated the 17th of February, and that on the 23rd of February, the complainant had come to the Magistrate, explained to him why it was he had been unable to attend on the 16th, and had then made an oral complaint to the Magistrate, the proceedings which led to the issue of process and the subsequent trial would all have been regular. It seems to us that the irregularity in the previous orders cannot under the circumstances of the present case be said to vitiate the proceedings. At the same time we wish very strongly to impress upon the learned Magistrate that the provisions of the Code as to procedure ought to be strictly complied with. Non-observance of the provisions of the Code leads to much confusion and waste of public time, not to speak of involving the parties in unnecessary expense. Under the circumstances of this case we see no sufficient ground for setting aside the conviction on the ground of the irregularity in the issuing of process to the accused.

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The second point raised in the application is that cumulative sentences were illegal. It seems to us that there is no force in this contention. Different persons were injured, grievous hurt was caused in one case and simple hurt in others. Therefore it was competent for the court to impose separate and accumulative sentences.

The only other matter is a question of severity of sentence. The injuries in most of the cases were simple. In one case there was a broken finger and the infliction on the head of a wound which laid bare the bone. No doubt these injuries were of a serious nature. There are, however, some circumstances connected with the case into which it is unnecessary to go in detail, but we have considered these circumstances and we think that the ends of justice will be met by making the sentences passed run concurrently. We order that the sentences of imprisonment passed on Bateshar and Mathura shall run concurrently instead of consecutively. In all other respects we dismiss the application. The applicants must surrender to their bail.

Order modified.

APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Piggott.

1915
June, 30.

KAULESHAR PRASAD MISRA (DEFENDANT) *v.* ABADI BIBI (PLAINTIFF) AND GOBIND NARAIN SINGH AND OTHERS (DEFENDANTS).*

Act No. IV of 1882 *(Transfer of Property Act), section* 54*—Sale—Condition attached to the payment of purchase money—Public policy.*

Where a deed purporting to be a sale-deed contained a stipulation that the price should be paid within one year, provided that possession was obtained within that time; but if possession was not obtained, then the payment of the price should be postponed, and further that in the event of the vendee not getting the property, the price should not be paid at all, *held* that the transaction amounted to a sale within the meaning of section 54 of the Transfer of Property Act, and the condition postponing the payment of the consideration was not contrary to public policy.

THE facts of this case were as follows:—

The plaintiff came into court alleging that the property in dispute belonged to one Ali Ahmad who died in 1910, leaving

* Second Appeal No. 829 of 1914, from a decree of Rama Prasad, District Judge of Ghazipur, dated the 20th of April, 1914, confirming a decree of Muhammad Husain, Subordinate Judge of Ghazipur, dated the 12th of December, 1913.