

1914

EMPEROR
v.
RAM
CHANDRA.

KNOX, J.—The learned Judge in making this reference appears to have overlooked the provisions of clause (7) of section 345 of the Code of Criminal Procedure. This forbids the composition of an offence being accepted except as provided by section 345.

Section 345 specially allows a case in which an appeal is pending to be opened to composition with the leave of the court before which the appeal is to be heard, but in it there is no mention of cases which come up on revision, and similarly there is no provision made in section 439 of the Code as to applying the powers granted in section 345 to cases in revision. The recommendation of the Judge, therefore, cannot be accepted. The accused person must submit to arrest and complete the sentence imposed upon him when he was convicted.

Let the record be returned.

Before Mr. Justice Tudball.

EMPEROR v. BISHAN PRASAD.*

1914
December, 18.

Act No. XLV of 1860 (Indian Penal Code), section 185—“Property”—*Exclusive right to sell drugs.*

Held, that a person who bid at an auction of the right to sell drugs within a certain area under a false name, and when the sale was confirmed in his favour, denied that he had ever made any bids at all, was rightly convicted of an offence under section 185 of the Indian Penal Code. *Queen v. Reazooddeen* (1) referred to.

IN this case the applicant Bishan Prasad attended an auction sale of the right to vend drugs within certain areas which was being held by the Collector and made bids; but he bid under a false name, and when finally his last bid was accepted by the Board of Revenue, he denied that he had ever made any bids at all. In respect of these acts he was prosecuted and convicted under section 185 of the Indian Penal Code. Against this conviction he applied in revision to the High Court.

Mr. Ross Alston and Babu Satya Chandra Mukerji, for the applicant.

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

*Criminal Revision No. 1086 of 1914, from an order of G. C. Badhyar, Sessions Judge of Mainpuri, dated the 15th of August, 1914

(1) (1865) 3 W. R., Cr. R., 33.

TUDBALL, J.—The applicant Bishan Prasad has been convicted under section 185 of the Penal Code and has been sentenced to a fine of Rs. 100. He made bids at a sale held by the Collector of the right to sell drugs in a certain tahsil and gave a false name. When finally his last bid was sanctioned by the Board of Revenue, he denied that he had ever made any bids at all, and he has accordingly been prosecuted under section 185 of the Code. The point raised on his behalf is that section 185 does not contemplate a sale of this description. The language of the section, however, is wide. The right to sell drugs is a monopoly granted for a certain area and comes within the definition of property. It is impossible to hold that the word "property" in section 185 is not used in its wide sense. The gist of the offence in the present case was the intention in the applicant's mind not to perform the obligation under which he was laying himself at the time of bidding. The facts having been found against him, they clearly in my opinion come within the offence mentioned in the section. The case is similar to that of *Queen v. Reazooddeen* (1).

There is no ground for interference. The application is therefore rejected.

Application rejected.

PRIVY COUNCIL.

DIGAMBAR SINGH, (PLAINTIFF) v. AHMAD SAYED KHAN, (DEFENDANT).

[On appeal from the High Court of Judicature at Allahabad.]

Pre-emption.—Right of pre-emption.—Effect of perfect partition on right of pre-emption.—No fresh wajib-ul-arz prepared at or after partition.—Right of a sharer in new mahal after partition to pre-empt property in another new mahal in which he was not a sharer at date of sale.—Value of wajib-ul-arz as evidence.—Prima facie evidence of custom of pre-emption without proof of instances of custom being enforced.

In this appeal, which was one arising out of a suit by the appellant, one of the co-sharers in a mauza, for pre-emption after there had been a partition of the mauza in which the land sold was situated, and no fresh wajib-ul-arz had been prepared after the partition had taken place, their Lordships of the Judicial Committee (affirming the decision of the High Court) were of opinion that the clauses relating to pre-emption contained in wajib-ul-arzes of 1863 and 1870, proved that prior to the partition the right of pre-emption had existed in the

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EMPEROR
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P C *
1914
October,
28, 26, 27.
November, 25

* Present :—Lord DUNEDIN, Lord SHAW, Sir JOHN EDGE and Mr. AMBER ALI.

(1) (1865) 3 W. R., Cr. R., 83.