

REVISIONAL CRIMINAL.

Before Sir Grimwood Mears, Knight, Chief Justice.

EMPEROR v. GANDHARP SINGH*

1920
May, 10.

Code of Criminal Procedure, sections 110 and 123(6)—Security for good behaviour—Nature of imprisonment to be awarded in default of finding security.

In cases under section 110 of the Code of Criminal Procedure the imprisonment awarded in default of finding security should as a rule be simple rather than rigorous. It is in each case for the court concerned to exercise its discretion in deciding which class of imprisonment is called for.

THIS was an application in revision preferred from jail by one Gaudharp Singh, against whom an order under section 110 of the Code of Criminal Procedure had been passed and who had failed to furnish the security demanded. The facts of the case sufficiently appear from the judgment of MEARS, C. J.

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

MEARS, C. J.:—In this case Gaudharp Singh has been convicted under section 110 of the Code of Criminal Procedure, on the ground that he is by habit a robber, house-breaker and thief and a desperate and dangerous character. The evidence of ten witnesses, who have no apparent reason for coming into the box to state falsehoods, is conclusive against him. He is alleged by them to have been concerned in dacoities and to be a terror to the neighbourhood, and the Magistrate and Sessions Judge have accepted that evidence. The Magistrate, having regard to the fact that Gaudharp Singh had previously in 1917 been convicted under this same section 110, ordered him to furnish security in one personal bond for Rs. 200 and two approved sureties each for Rs. 200 to be of good behaviour for a period of three years. In default of finding such sureties the accused was to be rigorously imprisoned for three years unless in the meantime the sureties were forthcoming. The only matter of importance in this revision is whether or not the imprisonment should be rigorous or simple. I am of opinion that in this case it should be rigorous and therefore the revision of Gaudharp Singh fails. This case, however, raises a

* Criminal Revision No. 328 of 1920, from an order of Shekhar Nath Banerji, Sessions Judge of Mainpuri, dated the 19th of January, 1920.

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point of interest, because it would appear that there is, I might say, a general practice, automatically to award imprisonment of a rigorous character instead of balancing the question of rigorous or simple imprisonment. Section 110 is a most necessary section in our Code of Criminal Procedure, but it is essentially a preventive section and is designed to make people keep within the bounds of law by providing sureties when it is evident that they are people of criminal tendency. A failure to provide sureties involves imprisonment. As section 110 is preventive rather than punitive, it would appear that in ordinary cases the imprisonment should be simple, and indeed under section 123, sub-section 6, the Magistrate in each case has to exercise his discretion and decide whether on the facts of each case the imprisonment should be simple or rigorous. I have made these observations on this section because I think there may be cases in which it would be sufficient to restrain a man by keeping him in prison and ordering such imprisonment to be simple. In the present case, however, as I have said above, I think the Magistrate's order was proper and the application for revision is rejected.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Tudball and Mr. Justice Sulaiman.

BALWANT SINGH (DECREE-HOLDER) v. BUDH SINGH AND OTHERS
(OBJECTORS).*

1920
May, 5.

Act No. IX of 1908 (Indian Limitation Act), schedule I, article 181—Execution of decree—Limitation—Execution temporarily suspended by an injunction.

Whilst an application for execution of a final decree in a mortgage suit was pending a suit was brought for a declaration that the decree itself had been obtained by fraud, and on the 9th of December, 1914, an order staying execution was passed. On the 26th of April, 1915, this suit was dismissed. An appeal was filed, but it too was dismissed on the 19th of April, 1917. The next application for execution of the mortgage decree was made on the 11th of June, 1918. *Held* that the application was time-barred. *Ruddar Singh v. Dhanpal Singh* (1) followed. *Moin-ud-din Khan v. Chajju Singh* (2) and *Qamar-ud-din Ahmad v. Jawahir Lal* (3) distinguished.

* First Appeal No. 295 of 1919, from a decree of Manmohan Sanyal, Subordinate Judge of Meerut, dated the 5th of May, 1919.

(1) (1903) I. L. R., 26 All., 156. (2) (1905) 2 A. L. J., 276.

(3) (1905) I. L. R., 27 All., 334.