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house, and we have the additional fact that there is positive direct evidence that he used to make a profit by allowing his house to be used as a place for gambling. Bhaggi Lal has, therefore, been rightly convicted. It necessarily follows from the fact that the other persons were gambling in the common gaming house kept by Bhaggi Lal, that their conviction is legally correct. I have been asked to interfere with the sentence as being excessive. This was a bad case of gambling in which a large number of persons of various castes had assembled together and no less than Rs. 1,400 were found in the possession of the men who were carrying on the gambling. In these circumstances I do not think I should be justified in interfering with the sentence. I accordingly dismiss the application.

*Application dismissed.*

*Before Mr. Justice Tudball.*

EMPEROR v. RAM BARAN SINGH AND OTHERS\*

*Criminal Procedure Code, sections 345, 438, and 439 (d)—Compounding of offences—Revision—Court exercising revisional jurisdiction not empowered to allow an offence to be compounded.*

It is not competent to a court exercising revisional jurisdiction to allow an offence to be compounded. *Emperor v. Ram Fiyari* (1) not followed. *Emperor v. Ram Chandra* (2) referred to.

THE facts very briefly are these :—

The applicants were convicted of an offence under section 323 of the Indian Penal Code. They went up in revision to the Sessions Judge and while the case was pending before him, the parties came to terms and applied to the court for leave to file the compromise. The Sessions Judge held that a court in revision had no power to give leave to compound the offence and hence the case could not be referred to the High Court.

Mr. A. P. Dube, for the applicants :—

Section 438 of the Code of Criminal Procedure lays down that the Session Judge has power to refer any case coming up before him in revision under section 435 for reversing or altering any order passed by a subordinate court. Section 439

\*Criminal Revision No. 113 of 1920, from an order of Abdul Halim, Additional Session Judge of Mirzapur, dated the 31st of October, 1919.

(1) (1909) I.L.R., 32 All., 153. (2) (1914) I.L.R., 57 All., 127.

empowers the High Court to exercise any of the powers conferred on a court of appeal by section 423.

Clause (d) of section 423 empowers an appellate court to make any amendment or any consequential or incidental order that may be just or proper. These powers are wide enough to include powers to allow to compound an offence. It follows, therefore, that a revisional court has also that power; *Emperor v. Ram Piyari* (1).

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

The powers of a court to allow to compound an offence are regulated by section 345. Clause 6 of that section lays down that the composition of an offence shall have the effect of an acquittal. A Session Judge in exercise of his revisional powers can only refer the matter to the High court under section 438 and cannot acquit the accused. The mere fact of giving the revisional court, a power to allow the compounding of an offence will mean the giving of a power of acquittal which it has not under section 438. Moreover, clause 7 of section 345 lays down that no offence shall be compounded except as provided by that section.

Clause 2 empowers only a trial court to allow to compound certain offences.

Clause 5, while empowering the appellate court to give leave, does not empower the revisional court to do the same; *Emperor v. Ram Chandra* (2) and *Emperor v. Lala* (3).

TUDBALL, J. :—This is an application in revision. The applicants were convicted of an offence under section 323 of the Indian Penal Code and sentenced to pay a fine of Rs. 25 each. They went in revision to the Sessions Judge and there they sought for permission to compromise the case with the opposite party. The Judge held that he had no power to allow a compromise in view of the terms of section 345 of the Code of Criminal Procedure. The applicants thereupon came to this Court. Two points are taken, first of all that the Court of the Sessions Judge had jurisdiction to allow a compromise to

(1) (1909) I.L.R., 32 All., 153.

(2) (1914) I. L. R., 37 All., 127.

(3) (1917) 15 A. L. J., 457.

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be filed although he had no power to acquit, and secondly that the sentence was unduly severe. In so far as the Sessions Judge's jurisdiction to allow a compromise to be filed is concerned, I think there is no force in this application. Section 345 of the Code of Criminal Procedure in clause 7 distinctly says :—" No offence shall be compounded except as provided by this section." The first four clauses of the section refer to the compounding of a case in the original court of trial. Clause 5 says :—" that offences may be compounded when an accused has been committed for trial or when he has been convicted and an appeal is pending only on the leave of the court to which the accused has been committed or before which the appeal is to be heard." Clause 6 says :—" The composition of an offence under this section shall have the effect of an acquittal of the accused." There is no provision whatsoever in this section for the composition of an offence when the matter is before the court on revision. The Sessions Judge himself clearly could not allow a composition, because he had no power on revision of passing an order of acquittal. All that he could do was to refer the matter to this Court. It is urged that this Court under section 439, has, in revision, the powers given to an appellate court under section 423 of the Code, and it is urged that clause (d) of the latter section is quite wide enough to enable this Court to allow a composition to be filed before it on revision. That clause runs as follows :—" May make any amendment or any consequential or incidental order that may be just or proper." This, in my opinion, cannot possibly be held to enable the court to allow a composition to be filed. A composition means an acquittal. Clause (d) is an addition to the Code which was inserted in order to make it clear that when a court came to a certain decision, either a conviction or an acquittal, it could also pass any necessary amendment which followed as a consequence on the order which had been passed in the case. It was never intended to overrule clause (7) of section 345. My attention is called to the case of *Emperor v. Ram Piyari* (1). On the other hand, there is another decision by one of the two Judges who was concerned with the former, in which he has taken the

opposite view, I think this later view was the more correct. The Court has only those powers on revision which are granted to it by section 439 and no further. If the Legislature had intended to grant this Court power to allow a composition on revision, it would clearly have said so in section 345, whereas it has not done so and has clearly stated that no offence shall be compounded except as provided by that section. The first ground for revision, therefore, fails. As regards the sentences the applicants are not persons of any position. They no doubt were rightly convicted. The matter was a trivial one and a sentence of Rs. 25 fine was perhaps hardly called for. In this respect I allow their application. I reduce the sentence of fine from one of Rs. 25 to one of Rs. 10 in each case. The excess, if paid, will be refunded.

*Conviction modified.*

## APPELLATE CIVIL.

*Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq,*  
**MATHURA PRASAD (PLAINTIFF) v. HARDEO BAKHSH SINGH**  
 AND OTHERS (DEFENDANTS)\*

*Pre-emption—Muhammadian law—Zamindari village—"Imperfect partition" of mahal into separate pattis—No rights or property left in common—No right of pre-emption amongst owners of different pattis inter se.*

Where the Muhammadian law of pre-emption is applicable there is ordinarily no right of pre-emption as between owners of different pattis of a mahal divided by imperfect partition. *Munna Lal v. Hajira Jan* (1) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Haribans Sahai* and Pandit *Lakshmi Narain Tewari*, for the appellant.

Dr. *S. M. Sulaiman* and Dr. *Surendra Nath Sen*, for the respondents.

TUDBALL and MUHAMMAD RAFIQ, JJ. :—This is a plaintiff's appeal arising out of a suit for pre-emption. The plaintiff is a co-sharer in *patti* Raghbir Singh in the village of Aitthapur. The defendants Nos. 5 to 7 were the owners of *patti* Nityanand,

\* First Appeal No. 401 of 1917, from a decree of Harihar Lal Bhargava, Subordinate Judge of Shahjahanpur, dated the 9th of May, 1917.