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for the revenue of the mahal by reason of the provisions of section 142 of Local Act No. III of 1901, and the payment of the revenue assessed upon these plots would rightly be made on behalf of the defendants by the lambardar under section 144 of the same Statute. In our opinion, therefore, the word 'co-sharer' in section 159 of the Agra Tenancy Act (No. II of 1901) means a person holding proprietary rights in the mahal, who is jointly and severally liable for land revenue with the other proprietors in the mahal, and whose revenue is payable through the lambardar under the provisions of section 144 of the United provinces Land Revenue Act (No. III of 1901). This is our answer to the question referred to us by the Collector, and our order on his reference is that his court do proceed with the case. The costs of this hearing will be costs in the cause.

Reference answered.

REVISIONAL CRIMINAL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

EMPEROR v. JOTI PRASAD AND OTHERS *

Criminal Procedure Code, section 42—Act No. XLV of 1860 (Indian Penal Code), section 187—Omission to give assistance to the police—Extent of power of police to require assistance.

A Sub-Inspector of police having received information that persons who had been concerned in a number of dacoities in the neighbourhood and who recently committed a dacoity at a village about two miles off had been seen in a forest tract near by, called upon the zamindar's agent to lend him a gun belonging to the zamindar, who was absent, and on two villagers to join him in a search for the dacoits. The agent refused to lend the gun, and the two villagers refused to join the expedition in search of the dacoits.

Held that the circumstances of the case were not covered by the provisions of section 42 of the Code of Criminal Procedure, and the persons in question could not, therefore, rightly be convicted under section 187 of the Indian Penal Code.

THIS was a reference by the Sessions Judge of Saharanpur recommending that the convictions of Joti Prasad and two others under section 187 of the Indian Penal Code should be set aside upon the ground that they were not warranted by the facts found against the accused.

* Criminal Reference No. 108 of 1919.

The facts of the case sufficiently appear from the judgment of the Court.

Mr. *Nihal Chand*, for the appellants.

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

PIGGOTT and WALSH, JJ. :—This is a reference by the learned Sessions Judge of Saharanpur, in deciding which we had the advantage of hearing the point very satisfactorily argued by counsel on both sides. The essential facts are these :— A Sub-Inspector of police, finding himself in a certain village in the north of the Saharanpur district, received information that persons who had been concerned in a number of dacoities in that neighbourhood, and who had recently committed a dacoity in a village about two miles off, had been seen in a forest tract in his neighbourhood. He endeavoured to get a number of villagers to join him in an expedition into that forest for the purpose of discovering the whereabouts and effecting the arrest of these dacoits. With this object in view he called upon Joti Prasad, local agent of an absentee zamindar, to join him and to bring with him, or in the alternative, to lend him the use of a gun which was kept in the zamindar's house under a licence personal to the zamindar. He also called upon two other villagers, Ishri and Agdi, to join him. These three men refused to accompany the Sub-Inspector on his expedition, and Joti Prasad further refused to lend the Sub-Inspector the use of the gun. The result was that no sufficient number of villagers volunteered to join the Sub-Inspector and that the latter gave up his intended expedition. Joti Prasad and Ishri and Agdi have been convicted by a Magistrate under section 187 of the Indian Penal Code of having intentionally omitted to give assistance to the Sub-Inspector which they were bound by law to render or offer. Whatever obligation lay upon these persons under the law is defined and limited by section 42 of the Code of Criminal Procedure. According to that section, as applied to the facts of this case, they were bound to assist the Sub-Inspector reasonably demanding their aid in the taking of any dacoits or suspected dacoits whom that officer was authorized by law to arrest. The Magistrate having convicted all three men and passed sentences of fine, the learned

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Sessions Judge of Saharanpur has referred the case to this Court, being of opinion that the convictions are not in law sustainable. Having heard arguments on both sides, we have come to the conclusion that the learned Sessions Judge is substantially right. Cases of this sort must be carefully considered on their own individual facts. It would be easy to suggest cases in which a refusal to render active assistance in the arrest of an absconding criminal or to place at the disposal of a responsible police officer material assistance, such as the use of a fire-arm or of a bicycle, or other means of locomotion urgently required by the circumstances of the case, might involve a criminal liability. We think the learned Sessions Judge has put his finger on what is the real weakness in the case for the prosecution when he says that the Sub-Inspector's request was for assistance in finding and arresting a number of unknown persons, whose precise whereabouts were also unknown at the time when the request for assistance was made.

Obviously the law does not intend that police officers should have a general power of calling upon members of the public to join them in doing the work for which they are paid, such as tracing out the whereabouts of an absconding criminal or collecting evidence to warrant his conviction. Taking the facts of the present case as they stand, and applying them to the precise words of section 42 of the Code of Criminal Procedure, we think that the convictions in this case were bad, because the assistance of the applicants in revision had not been invited to assist the police officer in the taking of any persons within the meaning of that section. The correct way of looking at it is that they had been asked to join in a search for the whereabouts of certain persons with a view to their arrest in the event of the search proving successful. We think this is a sufficient ground on which to dispose of the reference. We accept accordingly the reference of the learned Sessions Judge, set aside the convictions and sentences in this case, and direct that the fines imposed upon Joti Prasad, Ishri and Agdi, if paid, be refunded.

Convictions set aside.