

REVISIONAL CRIMINAL.

Before Mr. Justice Walsh and Mr. Justice Rives.

EMPEROR v. CHANDAN AND ANOTHER.*

Criminal Procedure Code, section 345—Compounding with one of several accused—Effect as regards the others.

1921
February, 9.

The complainant charged four persons with having combined in committing the offence of grievous hurt against him. Subsequently on its appearing that the offence was not grievous but simple hurt, he compounded the case as regards one of the four accused. *Held* that this did not necessitate the case being compounded as regards the other three. *Muthia Naich v. The King-Emperor* (1) followed.

THIS was an application in revision from the order of a magistrate convicting the applicants under section 323 of the Indian Penal Code. The facts of the case sufficiently appear from the judgment of the Court.

Mr. C. Ross Alston and Munshi Ram Nama Prasad, for the applicants.

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

WALSH and RIVES, JJ. :—This is an application in revision under the following circumstances :—The complainant charged four persons with having assaulted him, causing grievous hurt. The offence charged against them all was, therefore, described as punishable under section 325 of the Indian Penal Code. One of the four absconded, but the other three appeared to stand their trial. The medical evidence showed that “grievous hurt” had not been caused, and in consequence the charge was altered to one of simple hurt, under section 323 of the Indian Penal Code. The complainant then petitioned the court to acquit one of the accused, who was a minor, on the ground that he had compounded the offence against him personally, but desired the court to proceed against the other accused persons. The court, thereupon, acquitted the minor. The other accused then petitioned the court claiming that the compounding of the offence against one of the original accused persons amounted in law to the compounding of the offence against them all,

* Criminal Revision No. 872 of 1920 from an order of Gopal Das Mukerji, Sessions Judge of Muttra, dated the 23rd of November, 1920.

(1) (1917) I. L. R., 41 Mad., 323.

1921
 EMPEROR
 v.
 CHANDAN.

and they relied on two decisions, *Chandra Kumar Das v. Emperor* (1) and *Sham Behari Singh v. Sagar Singh* (2). The Magistrate rejected their petition relying on *Muthia Naick v. The King-Emperor* (3). From that order an application was filed before the Sessions Judge who rejected it. Hence this application to this Court.

As there was no decision of this Court on the point and as three High Courts had taken a different view of the question, it was referred to a Bench of two Judges.

It seems to us that the view taken by the Madras High Court is right. What the complainant came into court with was an accusation against four persons, each of whom, he said, had assaulted him. He filed one complaint against all four because all four together at the same time assaulted him and under the law all four could be tried together, as was obviously most convenient. There had been in reality, if his allegations were true, four assaults, or offences punishable under section 323 of the Indian Penal Code, committed more or less simultaneously. In one sense it was a joint offence, but it was also a separate offence on the part of each assailant. It seems to us, therefore, that the compounding of the offence against one of them could not affect the case against any of the others. We, therefore, think that the order of the court below was right and direct that the papers be returned.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Ryves and Mr. Justice Gokul Prasad.

RAM SURAT MISRA AND OTHERS (PLAINTIFFS) v. GUR PRASAD
 AND ANOTHER (DEFENDANTS).*

1921
 February, 10.

Act No. IV of 1882 (Transfer of Property Act), section 68(c)—Mortgage with possession.—Dispossession by person having higher title than mortgagor—Right to sue for mortgage money.

Dispossession of the mortgagee by a person holding a better title than the mortgagors comes under the provisions of section 68(c) of the Transfer of

* Second Appeal No. 1101 of 1917, from a decree of G. C. Badhwar, District Judge of Ghazipur, dated the 21st of June, 1917, reversing a decree of Mirza Muhammad Nadir Husain, Officiating Subordinate Judge of Ghazipur, dated the 13th of July, 1916.

(1) (1932) 7 C. W. N., 176.

(2) 1 Pat. L. T., 32.

(3) (1917) I. L. R., 41 Mad., 323.