

## REVISIONAL CRIMINAL.

*Before Mr. Justice Piggott.*

EMPEROR v. MULI.\*

*Act No. XLV of 1860 (Indian Penal Code), section 225B—Escape from jail of a person imprisoned for failure to furnish security to be of good behaviour.*

1920  
July, 23.

Where a person escapes from jail in which he was confined, under section 123 of the Code of Criminal Procedure, by reason of his having failed to furnish security to be of good behaviour, his conviction should be recorded under section 225B, and not under section 224, of the Indian Penal Code. *Queen Empress v. Kandhaia* (1) referred to.

THIS was an application in revision from an order convicting the applicant of the offence of escaping from jail, in which he was confined in consequence of his failure to find security to be of good behaviour. His conviction had been recorded under section 224 of the Indian Penal Code, and the main ground of revision was that it should have been under section 225B.

Babu *Satya Chandra Mukerji*, for the petitioner.

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

PIGGOTT, J.:—Muli has been convicted, on a charge under section 224 of the Indian Penal Code, of having escaped from a jail in which he was confined under a warrant under section 123 of the Code of Criminal Procedure, by reason of his having failed to find security to be of good behaviour. The old ruling of this Court in *Queen Empress v. Kandhaia* (1) seems to hold good to this extent that the applicant Muli was not being detained for any offence, and consequently the conviction against him should not have been recorded under section 224 of the Indian Penal Code. The decision above referred to, along with one or two similar decisions of the Calcutta High Court, were regarded as pointing to an error of omission on the part of the Legislature, and led, amongst other changes in the law, to the enactment of section 225 B of the Indian Penal Code. The conviction in this case should undoubtedly have been recorded under that section and the sentence cannot exceed the maximum

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\* Criminal Revision No. 386 of 1920, from an order of Piaru Lal Katara, Additional Sessions Judge of Agra, dated the 10th of April, 1920.

(1) (1884) I. L. R., 7 All., 67.

1910

EMPEROR  
v.  
MULL.

provided by section 225 B. I do not propose to reduce it below the maximum period specified in that section, because this was an escape from a jail, and the escape of a person imprisoned for want of furnishing security to be of good behaviour is a serious matter. I direct that the conviction in this case be recorded under section 225 B of the Indian Penal Code and the sentence reduced to one of rigorous imprisonment for six months.

*Conviction altered.*

*Before Mr. Justice Piggott.*

EMPEROR v. RAHU AND OTHERS.\*

1920  
July, 23.

*Criminal Procedure Code, sections 110, 167, 169, 55—Arrest on suspicion of a complicity in particular dacoity—Evidence insufficient—Detention in custody with a view to proceedings under section 110, illegal without re-arrest under section 55.*

Certain persons who had been arrested (under section 54 of the Code of Criminal Procedure) on suspicion of having been concerned in a dacoity were committed to the local jail on a Magistrate's warrant. Before the formal conclusion of the investigation, the investigating police officer reported to the Magistrate that there was no sufficient evidence upon which to charge these persons with participation in the dacoity. They were not, however, released, but the Magistrate passed an order directing them to be detained in jail pending the result of a police inquiry with reference to their liability to be proceeded against under section 110 of the Code of Criminal Procedure. Twelve days after the passing of this order information was laid before a Magistrate having jurisdiction under section 110 and an order was duly framed under section 112 and communicated to the persons concerned.

*Held* that the order for the detention of such persons after the police had reported that there was no evidence against them on the specific charge of dacoity was illegal unless and until they were re-arrested by the police under section 55. *Emperor v. Maiku* (1) referred to.

THE facts of this case are fully set forth in the judgment of the Court.

Mr. *Nihal Chand* and *Babu Kirpa Ram Dany*, for the applicants.

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

PIGGOTT, J.:—This is an application in revision in connection with a proceeding under section 110 of the Code of Criminal

\*Criminal Revision No. 384 of 1920, from an order of J. P. Sale, District Magistrate of Moradabad, dated the 25th of May, 1920.

(1) (1919) I. L. R., 41 All., 483.