

1922

MUHAMMAD
MUBARAK
HUSAIN
v
SARU BIMAL
PRASAD.

out of its way to mark the nature of the order which it purported to pass by using the words "*filial*," which we must render "for the present" or "for the time being." There can be no doubt as to the order which the court intended to pass and that order was submitted to by the parties. It was, in substance and effect, an order that the execution proceedings do stand adjourned *sine die*. It has, however, been contended before us that the principle laid down by the learned Judges of the Calcutta High Court in the case above referred to has been adopted and enforced by a Bench of this Court. The reference is to the case of *Dildar Husain v. Sheo Narain* (1). We are of opinion that that case is distinguishable on the facts. To begin with, the question before the court in that case concerned the rights of a *bona fide* transferee for value. Secondly, there had been no qualifying expression used in the order of dismissal such as we find in the order laid before us in the present case. While, therefore, we desire to lay stress on the fact, already pointed out by us, that the order directing the execution case to be dismissed for the time being and the attachment maintained was not a proper order for the court to have passed, we are not prepared to treat it as a nullity and as having no effect upon the parties between whom it was passed. We think there is no force in this appeal and we dismiss it accordingly with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

1921
December,
22.

Before Mr. Justice Stuart.

EMPEROR v. ANWAR*

Criminal Procedure Code, section 239—Joint trial—Same transaction—Joint trial of the thief and of the receiver of stolen property.

Two bicycles were stolen from different places, and in each case one Anwar, an employee of a person called Ram Saran who kept a bicycle shop was seen loitering in the neighbourhood about the time when the bicycles disappeared. Parts of each of the stolen bicycles were afterwards found, some in the shop of Ram Saran and some in the house of one Narbada Prasad.

* Criminal Revision No. 657 of 1921, from an order of I. B. Mundle, Sessions Judge of Allahabad, dated the 5th of September, 1921.

(1) (1918) I. L. R., 41 All., 157.

Held that the joint trial of the three persons mentioned for offences under sections 379 and 411 of the Indian Penal Code was not illegal. *Emperor v. Balabhai Hargovind* (1) and *Jivan v. Emperor* (2) referred to.

1921

EMPEROR
v.
ANWAR.

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

Mr. *L.M. Roy*, for the applicant.

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

STUART, J.:—The facts are as follows. A bicycle was stolen from the precincts of the Allahabad Post Office. Another bicycle was stolen from the precincts of the Allahabad Bank. Parts of both stolen bicycles were found in the house of a man called Narbada Prasad. Parts of both stolen bicycles were found in ~~the~~ shop of a bicycle dealer called Ram Saran. Evidence was given to the effect that Anwar, an employee of Ram Saran in his bicycle shop, had been seen loitering both at the Post Office and at the Allahabad Bank just before the bicycles disappeared. All three men were charged before a Magistrate of the first class under section 411 of the Indian Penal Code, Anwar being charged in the alternative under section 379 of the Indian Penal Code. The magistrate convicted Narbada Prasad and Ram Saran under section 411 of the Indian Penal Code and Anwar under section 379 of the Indian Penal Code. Narbada did not appeal. Ram Saran appealed, and was acquitted on the merits. Anwar appealed, but his appeal was dismissed. He comes here in revision. The first point taken by his learned counsel is that the joint trial of Narbada, Ram Saran and Anwar was bad in law under the provisions of sections 234 and 239 of the Code of Criminal Procedure. How does the case stand against the three? The case for the prosecution was that Anwar had stolen both bicycles and that Ram Saran was in dishonest possession of parts of both bicycles and that Narbada Prasad was also in dishonest possession of parts of both bicycles, each knowing that these parts were stolen property. According to the view taken in the case of *Emperor v. Balabhai Hargovind* (1) the theft of the two bicycles and the dishonest possession of them knowing them to be stolen, that possession being by

1921

EMPEROR
v.
ANWAR.

different persons, formed one transaction, even though the receipt was not simultaneous with the theft. I agree with the view taken in that decision. I do not find that there is anything in my view contrary to the view expressed by LINDSAY, J., in the case of *Jiwan v. Emperor* (1), for there, the actual thief not being charged in the case, there was nothing to connect the three persons. Here it is the fact that Anwar, the actual thief, was charged with the receivers, which justifies the several acts being considered parts of one transaction. On the merits Anwar was clearly proved to have been loitering just before the theft of the bicycles. When the owners returned, the bicycles had disappeared, and Anwar had disappeared. Portions of the stolen bicycles were found in the shop in which he is employed. This being the case I do not see my way to interfere on the merits. I therefore dismiss this application.

Application dismissed.

MISCELLANEOUS CIVIL.

1922

January, 4.

Before Mr. Justice Piggott and Mr. Justice Walsh.

INAYAT-ULLAH KHAN (APPLICANT) v. NISAR AHMAD KHAN
(OPPOSITE PARTY).*

Civil Procedure Code (1908), section 24—Transfer—Principles guiding a Court in considering an application for the transfer of a civil case.

In the matter of applications for the transfer of civil suits it is the duty of a court to insist upon any litigant applying for transfer making out a strong case in favour of the balance of convenience. On the question of the balance of convenience, the convenience of the parties in the conduct of the litigation is certainly a relevant consideration. *Tula Ram v. Harjivan Das* (2) and *Subba Bibi v. Maqbul Husain* (3) followed, *Madho Prasad v. Moti Chand* (4) doubted.

This was an application under section 22 of the Code of Civil Procedure for transfer of a suit pending in the court of the Subordinate Judge of Shahjahanpur. The facts out of which the application arose are fully set forth in the judgment of the Court.

Pandit *Uma Shankar Bajpai*, for the applicant.

* Civil Miscellaneous No. 297 of 1921.

- (1) (1921) 19 A. L. J., 815. (3) (1916) 14 A. L. J., 242.
(2) (1883) I. L. R., 5 All., 60. (4) (1919) I. L. R., 41 All., 381.