

APPELLATE CRIMINAL.

Before Mr. Justice Mukerji and Mr. Justice King.

EMPEROR v. BIHARI BHAR.*

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May, 10.

Act No. VI of 1924 (*Criminal Tribes Act*), sections 20 and 22
—*Criminal Tribe—Member of, failing to report—Summary trial—Criminal Procedure Code, section 260.*

One Bihari Bhar was tried summarily by a Magistrate of the first class for an offence under "section 22 of Act VI of 1924," and was convicted and sentenced to three months' rigorous imprisonment. He appealed from jail, and the Sessions Judge acquitted him on the sole ground that the offence could not be tried summarily.

Held, on appeal by the Local Government against this order of acquittal, (1) that the Magistrate ought to have recorded specifically the precise offence, amongst those mentioned in section 22 of the Criminal Tribes Act, 1924, with which the accused was charged and of which he was convicted, (2) that the offence which the accused had committed was the omission to comply with clause (b) of division (c) of rule 8 framed by the Local Government under section 20 of the Act, and (3) that, as this offence was punishable with a maximum sentence of six months' rigorous imprisonment, the Sessions Judge was wrong in acquitting him merely because the trial was a summary one.

The Government Advocate (Pandit *Uma Shankar Bajpai*), for the Crown.

Babu *Satish Chandra Das*, for the respondent.

MUKERJI and KING, JJ. :—This is an appeal by the Local Government against the acquittal of one Bihari Bhar, son of Chauthi Bhar, of an offence under section 22, clause (2), sub-clause (a), of the Criminal Tribes Act, being Act No. VI of 1924.

*Criminal Appeal No. 289 of 1928, by the Local Government, from an order of Harish Chandra, Additional Sessions Judge of Benares at Jaunpur, dated the 21st of January, 1928.

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The opposite party, Bihari, was convicted by the learned Magistrate of the first class on the 13th of December, 1927. He appealed from jail, and the learned Sessions Judge acquitted him on the sole ground that the offence could not be tried summarily, and in summarily trying him the learned Magistrate made an error of law. In the result, the learned Judge acquitted Bihari, and having regard to the circumstance that Bihari had already been in jail for over a month he did not order a re-trial. The learned Government Advocate has argued that the offence with which Bihari was charged was an offence punishable with the maximum amount of six months' rigorous imprisonment and that, therefore, under section 260 of the Code of Criminal Procedure, the case was triable summarily. We find that the learned Magistrate did not specify clearly the offence with which Bihari was charged. He simply stated, against column 5 of the form in which summary convictions are recorded, 'section 22 of Act VI of 1924'. Section 22 of the Criminal Tribes Act is a large section and contains several portions. In the earlier portion, sub-section (1) deals with offences which are punishable with one and two and three years' rigorous imprisonment. The sub-section (2) deals with other kinds of offences, some of which are punishable only with six months' rigorous imprisonment. We have tried to find out what was the actual offence with which Bihari was charged, in order to find out what would be the appropriate clause of section 22 under which he should be charged, if the case was made out against him.

The evidence shows that Bihari, who was a registered member of a criminal tribe, left his house on the 22nd of November, 1927, and reported to Baldeo chaukidar that he was going to the village of Audiar, and was likely to stay there for the night. He also informed him that he was to stay at the house of Pancham Bhar at

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Audiar. We further find that Pancham denies that Bihari ever went to him or stayed with him for the night. The evidence of Deo Narain, the chaukidar of Audiar, is to the effect that Bihari accused did not report to him his arrival at the village of Audiar, if he did at all arrive there.

Under powers given to it by section 20 of the Act, the Local Government has framed certain rules, under clause (d) of that section, as to the manner in which registered members of a criminal tribe are to report themselves or notify their residence or any change or intended change of residence, or any absence or intended absence. Paragraph 8 of the rules so framed has three divisions, and the division (c) deals with absence and intended absence from residence. By clause (b) of this division (c) a registered member of a criminal tribe is required "to notify immediately after arrival at and immediately before his departure from any place at which he arrives or halts at night." The report is to be made to the chaukidar, or in his absence to the headman of the village. Even if Pancham is not to be believed, we have got the evidence of Deonarain to the effect that Bihari did not notify to him his arrival at the village of Audiar, supposing that he did arrive there. The offence, therefore, which Bihari did commit is the omission to comply with clause (b) of division of (c) of rule 8 framed by the Local Government.

Section 22 of the Criminal Tribes Act lays down that the contravention of any rule made under section 20 and not punishable by clause (1) of section 22 is to be punished, on a first conviction, with imprisonment for a term which may extend to six months. We find, therefore, that the offence which Bihari did commit is an offence punishable with the maximum sentence of six months' rigorous imprisonment. In this view, the offence was triable summarily by a Magistrate of the first class.

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It was argued before us that there is no sufficient material on the record to show that the notification under section 10 of the Criminal Tribes Act was issued by the Local Government. This is a point which was never taken before. On the other hand, we find that the Sub-Inspector swore that Bihari was "a registered member". We also find that Bihari was in the habit of reporting his absence from the village to the chaukidar. In this case he did make a report which was reported to the police-station by Baldeo. In the circumstances, we do not think that there is any reason to suppose that Bihari was a man with respect to whom a notification under section 10 of the Criminal Tribes Act had not been issued.

The acquittal of Bihari was wrong in law. It must be set aside. As regards the sentence, he has been in jail now for nearly three months. He was in jail partly as an under-trial prisoner, and partly as a convicted prisoner. In the circumstances, we do not think that we need send him back to jail.

We set aside the order of acquittal passed by the learned Sessions Judge on the 21st of July, 1928, and record an order of conviction. We direct that he be released at once, the sentence and punishment suffered by him being enough in the circumstances of the case.