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the accused should be caned. I have had to adopt this course because the accused has already suffered detention for about 10 months and I have to take that fact into consideration.

APPELLATE CRIMINAL

Before Mr. Justice Bajpai

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August, 14

EMPEROR *v.* NATHU RAM*

Explosive Substances Act (VI of 1908), section 7—Sanction of Government for "trial"—Whether sanction necessary at preliminary inquiry stage—Sanction for one offence—Alternative charge, and conviction, under another offence—Validity—Criminal Procedure Code, sections 236, 237.

It is not necessary for the prosecution to obtain the sanction of the Local Government, required by section 7 of the Explosive Substances Act for the trial of an offence under that Act, while the case is in the stage of an inquiry by the Magistrate; it is sufficient if sanction has been obtained when the case proceeds to trial in the court of session.

Where sanction was obtained for the prosecution of the accused for an offence under section 4(*b*) of the Explosive Substances Act, and the Sessions Judge at the trial framed a charge in the alternative under section 5 as well and convicted the accused under that section, it was *held* that the conviction was lawful and justified under the provisions of sections 236 and 237 of the Criminal Procedure Code.

Messrs. *Kartar Narain Agarwala* and *Jagat Behari Lal*, for the appellant.

The Government Pleader (Mr. *Shankar Saran*), for the Crown.

BAJPAI, J.:—This is an appeal by Nathu Ram who has been convicted under section 5 of the Explosive Substances Act (Act VI of 1908) by the Assistant Sessions Judge of Etawah and sentenced to 4 years and 6 months' rigorous imprisonment. Mr. *K. N. Agarwala* appearing on behalf of the appellant has taken me through the entire record. Before I deal with the question of fact

*Criminal Appeal No. 1054 of 1933, from an order of Hari Shankar, Assistant Sessions Judge of Etawah, dated the 16th of October, 1933.

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as to whether the evidence on the record justifies the conviction of the appellant, I should dispose of certain questions of law advanced by learned counsel. It is said that because of section 7 of the Explosive Substances Act the learned Magistrate who committed the accused to the court of session should not have taken cognizance of the case without the consent of the Local Government. That provision of law runs as follows: "No court shall proceed to the *trial* of any person for an offence against this Act except with the consent of the Local Government or the Governor-General in Council." It is conceded that no such consent was obtained while the case was being inquired into in the court of the committing Magistrate. It is, however, conceded by the defence that when the case proceeded to trial in the court of session the consent of the Local Government was obtained. I am of the opinion that it was not necessary for the prosecution to obtain the sanction of the Local Government while the case was in the stage of an inquiry. I am fortified in my view by the case of *Emperor* v. *Kallappa* (1).

It was then argued that the sanction that was obtained from the Local Government was for the prosecution of the appellant under section 4(*b*) of the said Act, and the learned Sessions Judge was not competent to frame a charge in the alternative under section 5 of the said Act and later on to convict the appellant under section 5. The position therefore is that the accused was being tried of an offence which was covered by the sanction, and under the provisions of section 236 of the Criminal Procedure Code the learned Sessions Judge upon perusing the commitment order framed a charge in the alternative under section 5 as well. Moreover, even if the learned Sessions Judge had not framed a charge under section 5 of the Explosive Substances Act he could, under the provisions of section 237 of the Criminal Procedure Code, have convicted the appellant under

(1) (1926) I.L.R., 50 Bom., 695.

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section 5, although he was charged under section 4(*b*) alone. I am, therefore, of the opinion that there is no force in the two contentions of law advanced before me.

[The judgment then discussed the facts of the case and concluded that the incriminating articles were in the possession and control of the accused; and the conviction and sentence were upheld.]

REVISIONAL CRIMINAL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Rachhpal Singh

EMPEROR *v.* KEHAR SINGH*

1934 *August*, 16

Prevention of Adulteration Act (Local Act VI of 1912), *section* 15(2)—*Hearing of case within seven days of service of summons—Irregularity—Prejudice—Criminal Procedure Code, section* 537.

Although the provisions of section 15 of the U. P. Prevention of Adulteration Act are mandatory and ought to be followed by Magistrates, they are subject to the general provisions of section 537 of the Criminal Procedure Code. So, where the summons was served less than seven days before the date fixed for hearing and the case was heard on that date, in contravention of the provisions of section 15(2), but no complaint or protest on the score of shortness of notice was made on behalf of the accused at the trial or in the grounds of revision to the Sessions Judge, it was *held* that the irregularity was cured under the provisions of section 537 of the Criminal Procedure Code as it did not appear that the accused had been prejudiced thereby.

Benarsi Das v. *King-Emperor* (1) and *Bohra Raghubar Dayal* v. *King-Emperor* (2), not followed.

The applicant was not represented.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

SULAIMAN C.J., and RACHHPAL SINGH, J.:—This is a reference by the Sessions Judge of Meerut recommending that the conviction of the accused under section 4 of the United Provinces Prevention of Adulteration Act (Act VI of 1912) be set aside.

*Criminal Reference No. 345 of 1934

(1) [1930] A.L.J., 911. (2) [1931] A.L.J., 690.