

1934

NUGENT
v.
NUGENT

Mrs. Nugent. An order *pendente lite* has already been made for the husband to pay to the wife Rs.350 for her costs. It appears to me that Doutre should not go scotfree. I think justice will be met by an order that the husband should pay Rs.250 and Doutre should pay Rs.100 for the wife's costs.

I think the wife also is entitled to alimony, under all the circumstances of this case. The husband's salary is Rs.340 per month and he has free quarters. In the document quoted above he was willing to pay his wife Rs.150 a month in 1930. The education of the children costs Rs.65 a month. The husband must be responsible for Rs.65 a month and pay it direct to the proprietor of the school where the children are. He will further pay the sum of Rs.85 per month to his wife as alimony.

The order therefore is that there will be a decree *nisi* with costs in favour of the wife. The husband's petition is dismissed.

REVISIONAL CRIMINAL

1934
A pril, 30

Before Mr. Justice Bennet
EMPEROR v. DARSU*

Criminal Procedure Code, sections 118, 123, 426—Security for good behaviour—Imprisonment for failure to give security—Computation of period of order—Release on bail pending appeal—Time of such release to be excluded from the period of order.

A person was ordered to furnish security for good behaviour for the period of one year, and as he failed to furnish security he was committed to prison for one year. He filed an appeal, pending which he was released on bail by the appellate court. The appeal was ultimately dismissed. *Held* that the time during which he was released on bail was to be excluded in computing the period of one year. The provision in section 426(3) of the Criminal Procedure Code governed the case; but even if it did not, on the ground that a person imprisoned under section 123 of the Code was not strictly speaking a convicted person, still the general principles of criminal law required that the period

*Criminal Revision No. 212 of 1934, from an order of S. Maitra, Sessions Judge of Ghazipur, dated the 7th of December, 1933.

during which he was released on bail must be excluded from the period of one year for which he was required to undergo imprisonment failing the giving of security.

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DARSU

Mr. *A. P. Pandey*, for the applicant.

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

BENNET, J.:—This is an application in revision on behalf of one Darsu who was ordered on the 17th January, 1933, to furnish security for a period of one year under section 109 of the Criminal Procedure Code. The security was not forthcoming and the Magistrate passed the following order: "The security is not forthcoming. The accused shall suffer rigorous imprisonment for one year unless the order is complied with earlier." The accused filed an appeal and he was released on bail pending that appeal on some date which learned counsel is not able to discover. The appeal took a long time in the sessions court and was dismissed on the 7th December, 1933. The accused was then taken into custody on some date not known and there was an order by this Court on the 28th February, 1934, for his release on bail, but it is stated that bail was not forthcoming. The claim of learned counsel is that more than one year has elapsed from the date of the order of the Magistrate, 17th January, 1933, and that such an order must be taken under section 120(2) of the Criminal Procedure Code as prescribing that the period of imprisonment shall commence on the date of the order unless the Magistrate, for sufficient reason, fixes a later date. The Magistrate did not fix a later date and therefore the argument is that the date must have commenced on the 17th January, 1933, and that the accused should not be detained under that order later than the 16th January, 1934. The claim of learned counsel is that there is no provision specifically by any section in the Code that a person ordered to furnish security of this nature should have the period for which he was on bail excluded from the period for which he is to be detained

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in jail. Learned counsel pointed out that the appeal to the sessions court came under section 406 of the Criminal Procedure Code, and that section 426, allowing an appellate court to release on bail pending the hearing of the appeal, only referred to convicted persons, and therefore the provision in sub-section (3) for the exclusion of the period during which he was released on bail will not apply to the case of an appellant who appeals from an order requiring him to give security. Learned counsel further argues that the order for release pending appeal in the present case would come under section 423(1)(d). I do not consider that that section can apply, because the section deals with the order to be passed after the appeal has been heard, and we are now considering the release on bail pending the decision of the appeal. It appears to me that either section 426 may be applied by analogy although a person imprisoned under section 123 of the Criminal Procedure Code is not strictly speaking a convicted person; or if this section be not applied then the section under which the sessions court may release on bail is section 498. That section states that the court of session may, in any case, whether there be an appeal on conviction *or not*, direct that any person be admitted to bail. There was an appeal before the sessions court which according to learned counsel was not an appeal on conviction. Therefore under section 498 the sessions court has power to release on bail. Personally I consider that the provision in section 426 does govern the present case. But whether it governs it or not the general principles of criminal law in my opinion require that the period during which the applicant was released on bail must be excluded from the period of one year for which he was required to undergo imprisonment failing the giving of security. If the principle described by learned counsel were adopted the result would be that in every case in which a person ordered to be imprisoned under section 123 made an appeal the period during which he was released on bail would

always reduce the period for which he was to be imprisoned. I do not consider that such a result could have been intended by the Code, otherwise there would be a special provision in the Code for such an unusual result.*

No other point was argued. Accordingly I dismiss this application in revision. The applicant will surrender to his bail and undergo the unexpired portion of his sentence.

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APPELLATE CRIMINAL

Before Mr. Justice Thom and Mr. Justice Kisch

EMPEROR v. NEM SINGH AND OTHERS*

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Criminal trial—Duties of prosecution—Suppression of material evidence in favour of the accused—Principles of British justice—Duties of court.

In a criminal trial the prosecution authorities have no right to take it upon themselves to decide whether a witness, who gives vital evidence tending to establish the innocence of the accused, is not a reliable witness and to withhold his evidence on that ground. It is the function of the court to decide upon his reliability and the prosecution have no right to usurp that function. While there is no duty upon those who are charged with the preparation of a prosecution case to produce in court every person examined by the police, in a murder case where a witness has given evidence which supports a plea of *alibi* taken by one of the accused persons, that witness ought beyond all doubt to be produced; in no circumstances should the fact of his statement be withheld from the court. The suggestion that the court ought to shut its eyes to such irregularities on the part of the prosecuting authorities, on the idea that they are entitled to do their best to obtain a conviction where there seems to be little doubt that the accused are guilty, is to be unhesitatingly rejected. The courts are charged with the duty of administering the law according to the principles of British justice and not according to any rules or methods which may be adopted by the prosecuting authorities and sought to be justified by reference to the conditions which may exist in this country or in a particular district. No such argument can justify, in the absence of legislative sanction, the slightest departure from principles

*Criminal Appeal No. 1136 of 1933, from an order of Ganga Nath, Sessions Judge of Aligarh, dated the 20th of December, 1933.