

## MISCELLANEOUS CRIMINAL

*Before Mr. Justice Allsop and Mr. Justice Bajpai*

EMPEROR *v.* WAHID ULLAH AHRARI\*

1935  
August, 1

*Contempt of Courts Act (XII of 1926), section 3—Order to pay costs—Jurisdiction—Mode of enforcement of such order—Criminal Procedure Code, section 547—Inherent jurisdiction—Direction to Collector to realise by execution against property of the accused.*

Where, in a case under the Contempt of Courts Act, XII of 1926, the High Court awarded a punishment of four months' simple imprisonment and also ordered the accused to pay a certain sum as costs of the Crown and of the complainant:

*Held*, (1) that the High Court had jurisdiction to pass the order for payment of costs; and (2), without deciding whether the costs could be realised as a fine under the provisions of section 547 of the Criminal Procedure Code, it was clear that the High Court had inherent jurisdiction to order the recovery of the amount, and in exercise thereof a warrant was issued to the Collector authorising him to realise the amount by execution, on the lines on which decrees are executed by the civil court, against the movable or immovable property of the accused.

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

Mr. B. S. Darbari, for the accused.

ALLSOP and BAJPAI, JJ.:—On the complaint of one Muhammad Istehsan proceedings under the Contempt of Courts Act XII of 1926, were started in this Court against S. M. Wahidullah Ahrari in connection with certain articles published by the latter in a paper at Aligarh while a complaint under section 500 of the Indian Penal Code was pending in a subordinate criminal court at Aligarh. By an order dated the 26th of October, 1934, passed by a Bench of this Court, Wahidullah was punished with simple imprisonment for a term of four months. He was also directed to pay the costs of Muhammad Istehsan and the Crown, and the costs of Muhammad Istehsan were fixed at Rs.100 and of the Crown at Rs.100. In the result Wahidullah was

\*Criminal Miscellaneous No. 281 of 1935.

directed to deposit Rs.200 as costs in this Court within two months.

The costs were not so deposited within the time allowed by this Court, and on the 30th of April, 1935, notice was issued to Wahidullah to show cause why the costs should not be realised as a fine under the provisions of section 547 of the Criminal Procedure Code. In reply to the notice it is contended by Mr. *Darbari* that this Court had no jurisdiction to pass an order for costs and that in no event could such costs be recoverable as a fine under the Code of Criminal Procedure. So far as the first contention is concerned we are of the opinion that it is not open to this Bench to consider the matter. If the order of the former Bench was without jurisdiction, other proceedings ought to have been taken for questioning the order. As it is, we are satisfied that this Court has such jurisdiction. In a number of cases this Court under similar circumstances has directed the person punished under the Contempt of Courts Act to pay the costs of the Crown. The same procedure was followed in the English courts, and cases to that effect are mentioned by Oswald in his book on "Contempt", third edition, page 242.

The next question that arises is whether we have the power to direct the realisation of costs as a fine according to the provisions of the Code of Criminal Procedure. This question is not without some difficulty, and it is not necessary for us to express an opinion on the point. In any event if we have jurisdiction to direct the payment of costs, as indeed we have, we have inherent jurisdiction to order its recovery. We think that the proper method by which these costs should be recovered should be on the lines on which decrees are executed by the civil court. We issue a warrant to the Collector of Aligarh authorising him to realise the amount by execution against the movable or immovable property of Wahidullah.

Finally, it was contended that Wahidullah was very poor and that we should, on the ground of such poverty,

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allow him to be discharged without paying the costs which he was ordered to pay. An application to this effect has been filed before us today, but it is not supported by any affidavit, and it is not possible for us to investigate the matter as to whether he is possessed of sufficient means or not. After all we are not directing the recovery of this amount by the arrest of Wahidullah; we have only authorised the Collector to realise the amount by proceeding against the movable and immovable property of the defaulter, and, if he is not possessed of such property, execution obviously will be infructuous.

### APPELLATE CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice  
 and Mr. Justice Bennet*

1935  
 August, 20

KANHAIYA LAL (DEFENDANT) v. SHIVA LAL (PLAINTIFF)\*

*Abadi—Co-sharer zamindar's house in abadi—Co-sharer's share in zamindari sold by auction—Position qua house—Ownership of materials, right of residence and right of transfer of house not affected.*

When a co-sharer zamindar, who owns a house in the village, loses his share in the zamindari by auction sale and becomes an ex-proprietary tenant, he loses his joint right in the site of the house but does not lose his proprietary right in the materials of the house nor his right of residence in it, nor his right of transfer of the house. A transfer of the house by him conveys a full title in the materials of the house and in the right of residence therein.

*Zahur Hasan v. Mst. Shaker Banoo* (1), disapproved.

Dr. N. U. A. Siddiqui, for the appellant.

Mr. Panna Lal, for the respondent.

SULAIMAN, C.J., and BENNET, J.:—This is a Letters Patent appeal by a defendant against a decree of a learned single Judge of this Court. The plaintiff is the zamindar of the village and he sued for a decree that the

\*Appeal No. 3 of 1934, under section 10 of the Letters Patent.

(1) A.I.R., 1925 All., 29.