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EMPERESS OF
INDIA
v.
MURARI.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji),
for the Local Government.

The respondent was not represented.

The judgment of the Court (STRAIGHT, J., and TYRRELL, J.)
was delivered by

STRAIGHT, J.—It was perfectly competent for the Magistrate to prefer the charge in respect of Khunni without any formal complaint being made, and he rightly did so. But he was in error in disposing of it in one and the same trial with the case in which Giasi was the prosecutor. The combination of three offences of the same kind, for the purpose of one trial, can only be, where they have been committed in respect of one and the same person, and not against different prosecutors, within the period of twelve months, as provided by the Criminal Procedure Code. As the trial of Murari for the offence against Khunni was therefore in our opinion irregularly held, we shall not disturb the Judge's order; nor do we think it necessary to direct any further proceedings on that charge. Looking at the evidence, it is obvious that the convict is a very dangerous and mischievous person, and fully deserves the measure of punishment inflicted upon him by the Magistrate. We therefore direct that upon each of the convictions for cheating Giasi, which must be recorded under s. 420, Indian Penal Code, the sentence upon Murari be enhanced to eighteen months rigorous imprisonment, or three years in all. The fines are hereby remitted.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

EMPERESS OF INDIA v. GAYADIN AND ANOTHER.

Appeal by Local Government from judgment of acquittal—Act X of 1872 (Criminal Procedure Code), s. 272.

It is not because a Judge or a Magistrate has taken a view of a case in which the Local Government does not coincide, and has acquitted accused persons, that an appeal by the Local Government must necessarily prevail, or that the High Court should be called upon to disturb the ordinary course of justice, by putting in force the arbitrary powers conferred on it by s. 272 of the Criminal Procedure Code. The doing so should be limited to those instances, in which the lower Court has so obstinately blundered and gone wrong, as to produce a result mischievous at once to the administration of justice and the interests of the public.

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Held, therefore, the Local Government having appealed from an original judgment of acquittal of a Sessions Judge, that, as such judgment was an honest and not unreasonable one, of which the facts of the case were susceptible, such appeal should be dismissed.

THIS was an appeal by the Local Government from a judgment of acquittal of Mr. J. H. Prinsep, Sessions Judge of Cawnpore, dated the 1st April, 1881. Madari, Gayadin, Bhagwandin, Binda, and Mangli were jointly tried by the Sessions Judge on a charge of murder. The Sessions Judge convicted all the accused persons on such charge, with the exception of Gayadin and Binda, whom he acquitted thereon. The present appeal was from the Sessions Judge's judgment acquitting Gayadin and Binda. The grounds of appeal were (i) that the acquittal of Gayadin and Binda was against the evidence in the case, and (ii) that the evidence in the case proved that Gayadin and Binda were guilty of the offence charged against them.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji), for the Local Government.

Mr. *Dillon*, for the respondents.

The judgment of the High Court (STRAIGHT, J., and TYRRELL, J.) was delivered by

STRAIGHT, J.—We do not feel called upon in this case to interfere with the decision of the Sessions Judge acquitting the two respondents, Gayadin and Binda. We are not prepared to say that, had it been our task to try them, as well as the persons who have been convicted, we might not have taken a view of their conduct similar to that expressed by our late colleague Mr. Justice Spankie in his judgment in the appeal of Madari and the others. But it does not appear to us that this is quite the test to be applied in determining this appeal by Government from the acquittal of Gayadin and Binda. On the contrary, we think it would be an inaccurate and inappropriate one. The powers given to the Local Government by s. 272 of the Criminal Procedure Code are of an exceptional and unusual character; and while we fully recognise the necessity for their existence in this country, we are equally clear that they should be most sparingly enforced; and, in respect of pure decisions of fact, only in those cases where, through the incompetence, stupidity or

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perversity of a subordinate tribunal, such unreasonable or distorted conclusions have been drawn from the evidence as to produce a positive miscarriage of justice. It is not because a Judge or a Magistrate has taken a view of a case in which Government does not coincide, and has acquitted accused persons, that an appeal from his decision must necessarily prevail, or that this Court should be called upon to disturb the ordinary course of justice, by putting in force the arbitrary powers conferred on it by s. 272. The doing so should be limited to those instances in which the lower Court has so obstinately blundered and gone wrong as to produce a result mischievous at once to the administration of justice and the interests of the public. We cannot say in the present case that the Sessions Judge so egregiously and foolishly erred in his conclusions, as to the respondents Gayadin and Binda, that we feel ourselves bound either to convict those two persons, or to order a new trial. He had the witnesses before him, and consequently the best opportunity of judging their truth, and he appears to have conducted the inquiry with care and patience, and to have weighed and considered the facts to the best of his ability. It may be, as we have already remarked, that we might have arrived at a view other than that formed by him, but holding his decision to be an honest and not unreasonable one, of which the facts were susceptible, we unhesitatingly dismiss this appeal.

Appeal dismissed.

CRIMINAL JURISDICTION.

Before Mr. Justice Brodhurst.

EMPERESS OF INDIA v. JANGBIR.

Commitment on a charge of adultery—Withdrawal of prosecution—Discharge of accused—Act X of 1872 (Criminal Procedure Code), ss. 196, 197, Explanation.

A Magistrate, having committed a person for trial by the Court of Session on a charge of adultery, immediately afterwards, on the representation of the prosecutor that he wished to withdraw from the prosecution, discharged the accused. Held that the order of discharge was bad, as under ss. 196 and 197, Explanation, Criminal Procedure Code, a commitment once made can be quashed by the High Court only.

THIS was a case reported to the High Court for orders by Mr. F. H. Fisher, Officiating Sessions Judge of Saháranpur, under s. 296 of the Criminal Procedure Code. It appeared that Jangbir

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