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IN THE MATTER OF THE PETITION OF SRIMATI PADDO SUNDARI DASI.

taken from the person to whom a certificate may be granted. Under s. 6 of Act XXVII of 1860, the granting of a certificate may be suspended by an appeal to this Court which may declare the party to whom the certificate should be granted, or may direct such further proceeding for the investigation of the title as it shall think fit; or it may, upon petition after a certificate has been granted by the District Court, grant a fresh certificate in supersession of the certificate granted by the District Court. But there the powers of this Court stops. In the case—*In the matter of the petition of Rukmin* (1)—a Division Bench of this Court took this view, following a previous ruling of this Court to the same effect in *Soonea* v. *Ram Sahu* (2), which is also supported by a decision of the Presidency Court in *Monmohinee Dasi* v. *Khetter Gopal Dey* (3) referred to in the case of *Rukmin*. At the same time, though we cannot entertain the appeal, we think it right to add that, if the facts are as stated by the applicant, it may well be the case that the District Court is demanding security to a larger amount than is necessary, and on a fresh application to the Judge that officer would probably reconsider his order. We dismiss the appeal; as there is no respondent, no order need be made as to costs.

Appeal dismissed.

FULL BENCH.

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March

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

IN THE MATTER OF DAULATIA AND ANOTHER.

Convictions of several offences—Maximum term of punishment—Act X of 1872 (Criminal Procedure Code), ss. 314, 453, 454—Joinder of charges.

Where a person who is accused of several offences of the same kind is tried for each of such offences separately by a Magistrate, the aggregate punishment which such Magistrate can inflict on him in respect of such offences is not limited to twice the amount which he is by his ordinary jurisdiction competent to inflict, but such Magistrate can inflict on him for each offence the punishment which he is by his ordinary jurisdiction competent to inflict.

A person accused of theft on the 1st August and of house-breaking by night in order to steal on the 2nd August, both offences involving a stealing from the

(1) I. L. R., 1 All., 287. (2) H. C. R., N.-W. P., 1870, p. 146.
(3) I. L. R., 1 Calc. 127.

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same person, was charged and tried by a Magistrate of the first class, at the same time, for such offences, and sentenced to rigorous imprisonment for two years for each of such offences. *Held* that the joinder of the charges was regular under s. 453 of Act X of 1872, and the punishment was within the limits prescribed by s. 314.

Empress v. *Umeda* (1) observed on by STRAIGHT, J.

ONE Daulatia and one Debuli were jointly tried before Mr. C. J. Garstin, Senior Assistant Commissioner, Kumaun District, for, firstly, having on or about the first day of August, 1879, at Teili Sunoli, stolen grain from the house of one Bachuli, and thereby committed an offence punishable under s. 379 of the Indian Penal Code; and, secondly, for having, on or about the second day of August, 1879, at the same place, committed house-breaking by night, with the intention of committing an offence in the house of Bachuli, and stolen therefrom grain and other property, and thereby committed an offence punishable under s. 454 of the Indian Penal Code. These charges were framed in writing on the 25th September, 1879. They were also jointly tried with one Jai Kishen before Mr. Garstin, charged, Daulatia with having, on or about the 15th day of July 1879, at Teili Sunoli, assisted Debuli in concealing and disposing of a silver bracelet which she had stolen from one Chamru, and thereby committed an offence punishable under s. 414 of the Indian Penal Code; and Debuli with having, on or about the same day, at the same place, stolen such silver bracelet from Chamru, and thereby committed an offence punishable under s. 379 of the Indian Penal Code. These charges were framed in writing on the 29th of September, 1879. They were also jointly tried with other persons before Mr. Garstin, charged with having, on or about the 7th day of May, 1879, at Teili Sunoli, stolen certain grain and other property belonging to one Tulasia, and thereby committed an offence punishable under s. 379 of the Indian Penal Code. These charges were also framed on the 29th September, 1879. They were found guilty of the charges against them in respect of Bachuli under a judgment dated the 30th September, 1879, and were sentenced, Daulatia, on the first charge, to rigorous imprisonment for two years, and on the second charge to further rigorous imprisonment for two years; and Debuli, on the first charge, to rigorous im-

(1) Not reported, decided the 18th July, 1879.

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prisonment for one year, and on the second charge to further rigorous imprisonment for two years. They were also found guilty, under a second judgment of the same date, of the offences charged against them in respect of Chamru; and were sentenced respectively to rigorous imprisonment for one year. They were also found guilty, under a third judgment of the same date, of the offence charged against them in respect of Tulasia, and were sentenced to rigorous imprisonment for two years for such offence. In his second and third judgments Mr. Garstin directed that the sentences should take effect at the expiration of the terms of imprisonment to which the accused persons had already been sentenced. Daulatia was also jointly tried with one Chub Deo before Mr. Garstin charged with having, on or about the 11th August, 1879, at Teili Sunoli, had in his possession certain stolen property belonging to one Bishen Dat, knowing such property to be stolen property, and thereby committed an offence punishable under s. 411 of the Indian Penal Code. This charge was framed on the 30th September, 1879. Mr. Garstin stopped the trial of Daulatia on this charge, with regard to the provisions of s. 314 of Act X of 1872, as he had already sentenced him to twice the amount which he was, by his ordinary jurisdiction, competent to inflict, and on the 1st November, 1879, committed him to the Court of Session on the charge that he, on or about the 11th day of August, 1879, at Teili Sunoli, committed the offence of having stolen property in his possession, and that he had already been convicted under ss. 379, 454, 414, and 379 of the Indian Penal Code, and thereby committed an offence punishable under s. 75 of the Indian Penal Code and within the cognizance of the Court of Session.

The Commissioner of the Kumaun Division, having regard to the proceedings of Mr. Garstin, referred the following case to the High Court for orders: "A Magistrate sentences A. to imprisonment in four cases amounting in the aggregate to seven years: he has exceeded his powers: A. appeals: I consider that A. deserves seven years as the proper punishment of his crimes, but there is no section under which I can order the Magistrate to quash his proceedings and commit the case t

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the Sessions; and it appears to me that, under the law, I can only reduce the punishment to the number of years within the power of the Magistrate: what ought to be done in such a case?" This reference was laid before Stuart C. J., and Spankie J., and was referred by them to the Full Bench, the order of reference being as follows :—

SPANKIE, J.—I am of opinion that the Magistrate has exceeded his powers. I concur in the view taken of s. 314, Criminal Procedure Code, by Mr. Justice Straight in the case noted (1). I am not, however, satisfied that we could do more than reduce the punishment, so as to bring the sentence within the terms of s. 314, Criminal Procedure Code. The Magistrate, I think, when the offender appears to be an habitual offender, should follow the procedure laid down in s. 315 of the Criminal Procedure Code, and in other cases, when evidence has been given which appears to justify a commitment to the Sessions, he should follow the procedure laid down in s. 196 of the Criminal Procedure Code. It is sufficient for the Magistrate, if he thinks that a case not exclusively triable, but triable by the Sessions Court and also by the Magistrate, ought to be committed to the Sessions, that he record his reasons to that effect and make the commitment, once having satisfied himself that he ought to make the commitment. The terms of the section are that the accused person shall be sent for trial before the Court of Session. In the cases before us, the Magistrate has not recorded his opinion that the offenders ought to be committed to the Sessions Court, but has dealt with them in his own Court and for offences triable by himself. I cannot say that he has acted without jurisdiction. The Commissioner of Kumaun allows that by law he can only reduce the punishment to the number of years within the powers of the Magistrate, and he asks what is to be done in such a case? I have endeavoured to show what can and ought to be done, and perhaps what I have said would be sufficient for the guidance of the Commissioner and Magistrate for the future. We, as a Court of Revision, could not enhance the sentences. If we considered that they had been *inadequate*, we might have passed a proper

(1) *Empress* v. *Umeda*, decided the 18th July, 1879, not reported.

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sentence in each case, but we cannot say that the offences were not triable by the Magistrate. In considering the effect of the first paragraph of s. 297, we must not overlook the definitions of "trial" and "judicial proceeding" in s. 4 of the Criminal Procedure Code. If we consider that any person convicted by a Magistrate has committed an offence not triable by such Magistrate, we may annul the trial and order a new trial before a competent Court. If we consider that a sentence passed on an accused person is one which cannot legally be passed for the offence of which the accused person has been convicted or might have been legally convicted upon the facts of the case, we may annul the sentence and pass a sentence in accordance with law. But this is not the case in the records submitted to us. The material error has not been in a "judicial proceeding," but the error has occurred in the "trial" after the charge had been drawn up, and trial includes the punishment of the offender. The sentences are wrong in law and must be set right. I would, therefore, reduce the sentences so as to bring them within the provisions of the third paragraph of s. 314 of the Criminal Procedure Code. It appears that the Commissioner reports that, since he sent up the cases to this Court, he has submitted another, which has been committed to his Court. I see no reason why he should not go on with the commitment in this case which was not committed until the 1st November, 1879, and was not tried simultaneously with the other cases.

STUART, C. J.—In these cases referred to us by the Commissioner of Kumaun, we can of course, under s. 297, Criminal Procedure Code, entertain and dispose of such of them as have been tried by the Magistrate, such trial being in my opinion a judicial proceeding within the meaning of that section. The Magistrate had clearly jurisdiction to try the cases, and at "one trial," if the facts allowed of that, and in that case he could only pass the sentence or sentences which are warranted by s. 314 of the Criminal Procedure Code. That section of the Code limits his powers to a punishment which "shall not, in the aggregate, exceed twice the amount of punishment which he is by his ordinary jurisdiction competent to inflict," or,

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other words, a punishment of four years, being the limit of the Magistrate's powers within his ordinary jurisdiction. In one of the cases before us in this reference, that of Daulatia, there are four convictions and sentences, the latter amounting in the aggregate to seven years' imprisonment, and these, if s. 314 applies, we must reduce to four years' rigorous imprisonment; and in another of the cases, that of Debuli, there are three convictions against her and three sentences amounting altogether to six years' rigorous imprisonment, but these sentences we must also reduce to the limit of four years, if s. 314 applies. The sentence in the case of Bhawani was within the Magistrate's powers, and as to Jaikishen, it appears that, on appeal to the Commissioner, he was acquitted. In regard to the last case reported by the Commissioner, the only order I would make would be to instruct him to proceed with the trial before himself on the Magistrate's commitment. What I have suggested respecting the cases of Daulatia and Debuli is on the hypothesis that s. 314 applies to their cases. But I entertained at the hearing and still entertain serious doubts whether the proceedings before the Magistrate in the cases of these two accused persons formed "one trial" within the meaning of s. 314, and this question I would refer to the Full Bench of the Court. It appears that the proceedings were not continuous in the legal sense. They occupied three days, the 24th, 25th, and 26th of September last, but, although judgment was given in each case on one and the same date, the charges against these two persons were separate, the evidence was separate, and the proceedings which constituted the trials were separate. So that we have not the case of one indictment containing different counts on the same facts, but separate and distinct cases in regard to the facts themselves, the evidence and procedure, a state of things which, in my opinion, is not affected by the judgments in the several cases being all delivered on a subsequent although one and the same day. A judgment by my honorable and learned colleague Mr. Justice Straight, on the meaning and application of s. 314 to trials and sentences by Magistrates was referred to, and nothing could be more correct than what he ruled (1). Indeed, what was so ruled is so obvious a reading of s. 314 as to exclude the pos-

(1) *Empress* v. *Umeda*, decided the 18th July, 1879, not reported.

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sibility of the slightest criticism or objection, but it has no application to the difficulty I feel in the present case, *viz.*, whether the proceedings which were had in the cases of the two accused persons, Daulatia and Debuli, were separate trials according to the definition of "trial" in s. 4 of the Criminal Procedure Code, or constituted "one trial" within the meaning and application of s. 314? This question I would refer to the Full Bench.

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

The following judgments were delivered by the Full Bench :—

STUART, C. J.—The opinion indicated in my referring order in this case was fully confirmed in my mind at the hearing before the Full Bench. It is quite clear that the Magistrate had jurisdiction to try these cases, but it is equally clear that the proceedings before him constituted distinct trials and not "one trial" within the meaning of the definition of "trial" in s. 4, Criminal Procedure Code, and within the meaning and application of s. 314, Criminal Procedure Code, the facts being different, the evidence different, and the procedure different. The Commissioner of Kumaun may therefore be informed in answer to his letter to the Registrar that we differ from him, and that the Magistrate in these cases has not exceeded his powers, but that the sentences he has passed must stand.

PEARSON, J.—S. 314, Act X of 1872, provides for cases in which a person is convicted at one trial of two or more offences, punishable under the same or different sections of any law for the time being in force, and empowers the Court to sentence him for the several offences of which he has been convicted to the several penalties prescribed by such enactment or enactments which such Court is competent to inflict, such penalties when consisting of imprisonment or transportation to commence one after the expiration of the other. It declares that it shall not be necessary for the Court by reason of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict for a single offence to send the offender for trial before a higher Court. It provides that, if the case be tried by a Magistrate, the punishment shall not in the aggregate exc-

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twice the amount of punishment which the Court is by its ordinary jurisdiction competent to inflict.

In the case in which Daulatia was charged with having committed offences under ss. 379 and 454, and Debuli with having committed offences under s. 380 and 454, Indian Penal Code, on the premises of Bachuli, on or about the 1st and 2nd August, 1879, and they were sentenced on the 30th September, 1879, the first to two years' rigorous imprisonment under s. 379 and two years' rigorous imprisonment under s. 454, and the second to one years' rigorous imprisonment under s. 380 and two years' rigorous imprisonment under s. 454, Indian Penal Code, the joinder of charges appears to have been regular under s. 453, and the punishment to be within the limits prescribed by s. 314, Act X of 1872.

The same persons were separately tried for offences under s. 379, Indian Penal Code, committed on or about the 7th May, 1879, in respect of property belonging to Tulasia, and were sentenced on the 30th September, 1879, each to two years' rigorous imprisonment to commence at the expiration of the term which they were already undergoing. They were also separately tried for offences committed under s. 379 and 414, Indian Penal Code, respectively, on or about the 15th July, 1879, in respect of property belonging to Chamru, and were sentenced each on the 30th September, 1879, to one year's rigorous imprisonment to commence on the expiry of the last term for which they had been already sentenced. The sentences in the two cases last mentioned appear to be legal under the provisions of s. 317, Act X of 1872. I agree with the learned Chief Justice in the opinion that the provisions of s. 314 of that Act do not apply to those two cases. The circumstances that they were decided on the same date, and that the first mentioned case was also decided on the same date, cannot have the effect of amalgamating the three cases so as to make them one. The proceedings in each of the three cases were perfectly distinct and each was disposed of by a separate judgment.

STRAIGHT, J.—This is a reference to the Full Bench of a mission for orders from the Commissioner of Kumaun by the

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Hon'ble the Chief Justice and Mr. Justice Spankie. The following are the circumstances in respect of which the question of procedure to be considered arises. Two persons, Daulatia and Debuli, were tried and convicted by Mr. C. J. Garstin, Magistrate of the first class, of the following offences:—(i) On 7th of May, 1879, stealing grain, the property of Tulasia, under s. 379 of the Penal Code. For this they were severally sentenced to rigorous imprisonment for two years. (ii) On 15th of July, 1879, Debuli with stealing a bracelet from a boy named Chamru, s. 379 of the Penal Code, and Daulatia with assisting in concealing and disposing of such bracelet, s. 414; severally sentenced to one year's rigorous imprisonment. (iii) On 1st August, 1879, Daulatia and Debuli, stealing grain, the property of Bachuli; Daulatia under s. 379 sentenced to two years' rigorous imprisonment, and Debuli to one year. In the same trial they were both further charged, convicted, and sentenced to two years' rigorous imprisonment for breaking into the house of Bachuli on the 2nd of August, 1879, with intent to commit an offence. To put it shortly, the convictions and sentences stand thus:—

Daulatia	...	(1) s. 379—two years. (2) s. 414—one year. (3) s. 379—two years. (4) s. 454—two „
Total	...	Seven years.
Debuli	...	(1) s. 379—two years. (2) s. 379—one year. (3) s. 380—one „ (4) s. 454—two years.
Total	...	Six years.

The point arising for our consideration is whether the Magistrate has exceeded his powers, or, in other words, was the maximum amount of punishment he could inflict limited to four years' rigorous imprisonment. By s. 20 of the Criminal Procedure Code,

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Magistrate of the first class may pass a sentence of imprisonment not exceeding the term of two years, and he has jurisdiction to try, amongst others, offences against ss. 379, 380, 414, and 454 of the Penal Code. A person convicted upon ss. 379 or 414 is liable to rigorous imprisonment for a term not exceeding three years, while the punishment under s. 380 may extend to seven years and under 454 to ten years. Upon any single conviction for any one of these offences a Magistrate of the first class may punish up to two years and beyond that he may not go. And while it appears that his jurisdiction to try any number of cases against any one person is unlimited, the sentences he can pass are to this extent circumscribed. No doubt under s. 196 of the Criminal Procedure Code he may send an accused person for trial by the Sessions Court, if "the evidence satisfies him" that it is one which ought to be tried in that Court; and by s. 315 he may adopt a similar course if the accused person has been previously convicted of an offence relating to coin or Government stamps or against property and is charged with a like offence, the punishment provided for which is three years or upwards, and if he considers such person to be an habitual offender. But it does not appear to me that these sections should in any way affect the consideration of the present point, namely, whether Daulatia and Debuli were convicted "at one trial of two or more offences, punishable under the same or different sections of any law for the time being in force." It is necessary very carefully to examine these commencing words of s. 314, nor must it be forgotten that in the analogous provision of s. 46, Act XXV of 1861, they were not at "one trial" but at "one time." Now the proviso to s. 314, limiting the amount of punishment to be inflicted by a Magistrate, is only applicable, where a person is convicted at one trial of two or more offences, punishable under the same or different sections of any law. When we look to the interpretation clause we find "trial" defined to mean "the proceedings taken in Court after a charge has been drawn up, and includes the punishment of the offender." Next it is important to see what restrictions there are as to the joinder of offences. According to s. 452 there must be a separate charge for every distinct offence and a separate trial, except, when under the terms of s. 453, a person is accused of more offences

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than one, of the same kind, within one year of each other, when he may be charged and tried at the same time for any number of them not exceeding three. These directions as to procedure appear to me perfectly clear, and it would, therefore, seem that there can only be one trial of two or more offences punishable under the same or different sections of any law, where those offences are of the same kind and fall within the terms of s. 453. In the present case the Magistrate seems to have properly joined the two charges of the 1st and 2nd of August in the third trial. They both involved a stealing from the same person and were apparently sufficiently "ejusdem generis" to permit the application of s. 453. The Magistrate had the alternative of trying them separately, but for purposes of expedition and convenience it was obviously proper to take them together, and I cannot help here expressing a hope that the effect of the judgment of this Court will not be to lead Magistrates to separately try charges which ought to be joined and disposed of in one trial in order to enable them to accumulate punishment Upon examination of the printed record in the present reference it appears to me that there were three separate trials in the strictest sense of the term, and that upon each of the first two convictions the Magistrate was authorised to punish up to two years' rigorous imprisonment, and, as to the third for the joint offences, to inflict a sentence not exceeding twice the amount he by s. 20 had power to inflict. I am aware that the consequence of holding this view will be that the Magistrates will be in a position to multiply terms of imprisonment, if there only be a sufficient number of charges before them, and I feel very strongly the force of my honorable colleague Mr. Justice Spankie's observations as to the wisdom of allowing so much latitude to the inferior criminal tribunals. I confess I should have preferred to be able to come to a conclusion directly opposite to that at which I have arrived. But whatever views I may entertain as to the policy of vesting in Magistrates such extensive powers to punish, it does not appear to me that the sections of the Criminal Procedure Code to which I have adverted are open to any construction other than that I have placed upon them. Accordingly I am of opinion that Mr. Garstin's orders of 30th September, 1879, are valid and good and cannot be impeached. Each trial was separate from charge

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sentence, and though the judgments were given and the punishments inflicted all on the same day, they are so distinguished and kept apart that each record is complete in itself.

I desire to add that the case of *Empress* v. *Umeda* (1) mentioned by the Chief Justice and Mr. Justice Spankie had not all these characteristics, and the judgment I then gave was based upon the, as I thought, irregular mode in which the Magistrate had decided the charges and inflicted the punishment "*en bloc*," and so to speak in the same breath. In this way it differs from the present case, but in such other respects as it is identical it must be taken that I have reconsidered and altered the view I then entertained.

SPANKIE, J.—Some three cases were referred. I have had the opportunity of reconsidering the opinion I at first entertained regarding the point at issue. I have also had the benefit of reading my honorable and learned colleague Mr. Justice Straight's opinion and I agree with him. As to the last case submitted to us, I think, as before, that the Magistrate has not exceeded his powers and was at liberty to make the commitment to the Sessions Court.

OLDFIELD, J.—I have arrived at the same conclusion as my honorable colleague Mr. Justice Straight that s. 314, Criminal Procedure Code, will not apply to the trials before us, so as to limit the aggregate punishment which the Magistrate could inflict, nor are the convictions and sentences otherwise illegal.

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November 9.

CIVIL JURISDICTION.

Before Mr. Justice Pearson and Mr. Justice Straight.

BHAIRON DIN SINGH (JUDGMENT-DEBTOR) *v.* RAM SAHAI (AUCTION-PURCHASER).*

Application to set aside sale—Review of judgment—Act X of 1877 (Civil Procedure Code), ss. 311, 626, 629—Order setting aside sale—Appeal.

An application under s. 311 of Act X of 1877 to set aside a sale in execution of a decree having been made by the judgment-debtor, the Court executing the

* Application, No. 541 of 1880, for revision under s. 622 of Act X. of 1872 of an order of W. Tyrrell, Esq., Judge of Allahabad, dated the 17th May, 1880.

(1) Decided the 18th July, 1879, not reported.