

I therefore allow the application, set aside the conviction and sentence and direct that the fine if paid be refunded.

*Application allowed.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Bisheshwar Nath Srivastava.*

KANDHAI AND OTHERS (ACCUSED-APPLICANTS) v. KING-EMPEROR (COMPLAINANT-OPPOSITE PARTY).\*

*Criminal Procedure Code (Act V of 1898), sections 413, 414, 415 and 439—Accused convicted summarily of criminal trespass under section 447, Indian Penal Code and of forcibly rescuing cattle under section 24 of the Cattle Trespass Act and fined separately for each offence—Combination of two or more punishments mentioned in sections 413 or 414—Section 415, Criminal Procedure Code, applicability of—Magistrate's order, if appealable—Appeal not preferred against an order appealable under Criminal Procedure Code—Revision against the order, if maintainable.*

*Held*, that the word "therein" as used in section 415 of the Code of Criminal Procedure refers to sections 413 and 414. In other words the section is intended to apply to cases in which two or more of the punishments mentioned in section 413 or 414 have been combined.

Where the accused were found guilty of committing criminal trespass and also of forcibly rescuing cattle and were convicted under section 447 of the Indian Penal Code and section 24 of the Cattle Trespass Act to a fine of Rs. 50 and Rs. 20 respectively by a Magistrate in the exercise of his summary powers, *held*, that the case was one in which two punishments such as were referred to in section 414 had been combined and therefore by reason of the combination of the two punishments, section 415 made the order appealable.

If an order is appealable but no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed as provided by section 439, clause (5) of the Code of Criminal Procedure.

\*Criminal Revision No. 117 of 1931, against the order of G. C. Badhwar, Sessions Judge of Fyzabad, dated the 26th of August, 1931

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Mr. *A. N. Mulla*, for the applicants.

The Assistant Government Advocate (Mr. *Ali Muhammad*), for the Crown.

SRIVASTAVA, J. :—This is an application for revision under section 435/439 of the Code of Criminal Procedure, against the order, dated the 26th of August, 1931, of the Sessions Judge of Fyzabad upholding the order, dated the 12th of August, 1931, of a Magistrate, 1st class, of the Fyzabad district convicting the applicants summarily under section 447 of the Indian Penal Code and section 24 of the Cattle Trespass Act and sentencing each of them to pay a fine of Rs. 50 in default two months' rigorous imprisonment under section 447 of the Indian Penal Code and a fine of Rs. 20 in default one month's rigorous imprisonment under section 24 of the Cattle Trespass Act. Briefly stated the facts are that there is a military grass farm in Fyzabad. A portion of the land of this farm has been reserved for growing grass for the use of the military. This reserved area has been enclosed with barbed wire fencing. On the night of 21st-22nd June, 1931, the applicants were found grazing about sixty heads of cattle in this reserved area. When the employees of the grass farm tried to secure the cattle in order to take them to the pound, the applicants resisted and rescued some thirty or thirty-five heads of cattle with the result that the grass farm employees could manage to impound only nineteen heads.

The learned Magistrate in an elaborate judgment after discussing the evidence at considerable length held that the prosecution case had been fully established and that all the accused persons were guilty of committing criminal trespass and also of forcibly rescuing cattle and that they were therefore liable to conviction under section 447 of the Indian Penal Code and section 24 of the Cattle Trespass Act. He accordingly awarded them the sentence stated above under each of these sections. The accused filed an application for revi-

sion in the Court of the Sessions Judge of Fyzabad against this order of the Magistrate. The application was dismissed summarily by the learned Sessions Judge.

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The first contention urged on behalf of the applicants is that as the Magistrate has awarded two punishments, one a fine of Rs. 50 under section 447 and the other a fine of Rs. 20 under section 24 of the Cattle Trespass Act, therefore the case is governed by section 415 of the Code of Criminal Procedure and in spite of the provisions of section 414 of that Code, the sentence was appealable to the Sessions Judge. Section 415 runs as follows :—

*Srivastava,*  
*J.*

An appeal may be brought against any sentence referred to in sections 413 or 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal, shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

The word "therein" as used in this section must in my opinion refer to sections 413 and 414. In other words the section is intended to apply to cases in which two or more of the punishments mentioned in section 413 or section 414 have been combined. The punishments mentioned in section 413 are a sentence of imprisonment not exceeding one month passed by a Court of Session and a fine not exceeding Rs. 50 imposed by a Court of Session or District Magistrate or other Magistrate of the 1st class. It is admitted that this section does not apply to the case. As stated before the conviction by the Magistrate was in the exercise of his summary powers and therefore the relevant section is 414. The punishment referred to in this section is a fine not exceeding Rs. 200 only. In the present case the Magistrate has imposed two such fines, one of Rs. 50

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and the other of Rs. 20. Thus the case is one in which two punishments such as are referred to in section 414 have been combined. If any of these punishments stood by itself, the order by virtue of section 414 could not be appealable but because the Magistrate imposed two such punishments, therefore by reason of the combination of the two punishments, section 415 makes the order appealable. I therefore accept the applicants' contention. But the applicants cannot derive any benefit from it. The order of the Magistrate being appealable, the applicants instead of making an application in revision to the Sessions Judge ought to have filed appeals against their conviction and sentence. As they did not do so, the learned Sessions Judge was perfectly right in dismissing the applications for revision summarily. It was argued that the learned Sessions Judge ought to have treated the application for revision as an appeal. But no such request was made to him and he was not bound to do so. Section 439, clause (5) of the Code of Criminal Procedure provides that where under this Act an appeal lies and no appeal is brought no proceedings by way of revision shall be entertained at the instance of the party who could have appealed. The result therefore is that the present application for revision is not maintainable. In this view of the matter it is not necessary for me to enter into the merits of the application.

The application fails and is dismissed.

*Application dismissed.*