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is always open to a party dissatisfied with a compromise entered into during his minority in proceedings before a Revenue Court, namely, to have it set aside if he can show that it was not beneficial to him. In the present case, however, as we have already observed, it has been found as a fact that the compromise in question was for the benefit of the minor.

Hasan, C.J.
and Kisch,
J.

We accordingly see no reason to interfere with the decree of the court below and dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Bisheshwar Nath Srivastava.

AHMAD JAN (APPLICANT) v. KING-EMPEROR (COMPLAINANT-OPPOSITE PARTY).*

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5.

Criminal Procedure Code (Act V of 1898), section 263—Summary trial—Magistrate's duty to record his reasons for conviction in a summary trial.

Held, that where a Magistrate tries a case summarily he is not bound to record evidence but he is bound to record his reasons for the conviction and to state them in such a manner that a superior court acting in revision may be in a position to judge whether there was sufficient material before the Magistrate to support the conviction. *Jagannath v. King-Emperor* (1), relied on.

Messrs. *H. D. Chandra* and *S. S. Chaudhri* for the applicant.

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

SRIVASTAVA, J. :—The applicant was tried summarily by a Magistrate 1st class of the Lucknow district for the offence of keeping a brothel in his house in breach of rule 2 of the byelaws framed under section 298H (e) of Act II of 1916 prohibiting the residence of prostitutes

*Criminal Revision No. 119 of 1931, against the order of M. Mahmud Hasan, Sessions Judge of Lucknow, dated the 12th of September, 1931.

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and the keeping of brothels in specified areas of the Lucknow Municipality. He found the accused guilty and imposed on him a fine of Rs. 30, in default one month's simple imprisonment. The accused made an application for revision to the learned Sessions Judge but he saw no reason to interfere and dismissed the application.

Unfortunately the learned Magistrate did not make any record of the statements of witnesses examined before him. Of course when a Magistrate tries a case summarily, he is not bound to record evidence but as observed by Mr. (afterwards Sir BENJAMIN) LINDSAY in *Jagannath v. King-Emperor* (1) the Magistrate is bound to record his reasons for the conviction and to state them in such a manner that a superior court acting in revision may be in a position to judge whether there was sufficient material before the Magistrate to support the conviction. The opening words of the judgment of the Magistrate show that the accused Ahmad Jan was prosecuted on the allegation that he kept a brothel in his house and had engaged one Miss Edna for prostitution. So far as I can see from the judgment of the learned Magistrate and the reference to the prosecution evidence contained therein, there is no evidence at all to show that the applicant kept a brothel in his house. All that the evidence shows is that Miss Edna was living in the house of the accused, that on one occasion, namely, on the 17th of April, 1931, a man identified as Khurshed Ahmad, son of the accused, met one Sergeant Harrison at Valerio's and brought him from there to the house in which Miss Edna was living. A woman in the house, whom Sergeant Harrison was not in a position to identify, asked him to pay Rs. 10 in order to have sexual intercourse with her which he did. This evidence might at best show that Khurshed Ahmad was keeping a brothel but cannot prove that the accused Ahmad Jan was the person who kept a brothel. There is absolutely no

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evidence of the house having been used for the purposes of prostitution on any other occasion. Even on the occasion in question there is nothing in the evidence to connect Ahmad Jan, accused, with the transaction between the woman alleged to be Miss Edna and Sergeant Harrison. It has not even been suggested that the accused Ahmad Jan received any share in the earnings of Miss Edna. In my opinion therefore the charge laid against the accused of his keeping a brothel was not justified and his conviction for that offence cannot be upheld. The learned Assistant Government Advocate realizing this difficulty wanted to bring the case under another part of rule 2 which provides that no person shall let or otherwise grant the use or occupation of any building to a public prostitute. In the first place the judgment of the Magistrate does not show that the accused was charged with this offence. The only charge against him, so far as I can see, was that he himself kept a brothel. In the second place though it is admitted by the accused that he had let the house for residential purposes to Miss Edna, there is no evidence that when he let the house to her he knew her to be a public prostitute. In this connection it may be pointed out that Miss Edna was prosecuted simultaneously with the accused Ahmad Jan in respect of the offence which took place on the night of the 17th of April, 1931. This offence led to two prosecutions, one against Miss Edna under rule 1 of the aforesaid byelaws for her being a public prostitute and residing within one of the prohibited areas and the other against Ahmad Jan for keeping a brothel. The charge against Miss Edna failed and she was acquitted by the learned City Magistrate. The accused Ahmad Jan was tried by another Magistrate and convicted as stated above. Under these circumstances the charge against Miss Edna herself having failed and in the absence of any evidence to prove that she was a public prostitute, it is hardly possible to say that the accused was guilty of letting the house to a public prostitute.

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

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Application allowed.

REVISIONAL CRIMINAL.

Before Mr. Justice Bisheshwar Nath Srivastava.

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

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5.

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