REVISIONAL CRIMINAL

Before Mr. Justice Ziaul Hasan and Mr. Justice H. G. Smith

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MAKRAND SINGH AND OTHERS (APPLICANTS) *v.* GANGA (OPPOSITE-PARTY)*

Criminal Procedure Code (Act V of 1898), section 415—Combination of sentences—Two or more sentences of fine, whether constitute a combination of two or more punishments—Several accused convicted under sections 147 and 379 Indian Penal Code and all sentenced to fine under both sections—Two accused also convicted of another charge under section 379, Indian Penal Code and sentenced to fine—Appeal against sentences, whether lies under section 415—Revision against the order, if competent.

Held, that punishments referred to in section 415, Criminal Procedure Code, include not only punishments of different kinds but also punishments of the same kind.

Where several accused are convicted by a magistrate under sections 147 and 379 of the Indian Penal Code in respect of an occurrence and a fine is imposed under both those sections and two of those accused are also convicted on another charge under section 379 of the Indian Penal Code in respect of a different occurrence and are sentenced to pay a separate fine and all the convicted persons file a revision in the Court of the Sessions Judge, *held*, that the fine imposed on each of the applicants was a combination of two punishments within the meaning of section 415 of the Code of Criminal Procedure and that the sentences of all those accused were appealable; and the sentences of the two accused in connection with the other occurrence were appealable under section 415A of the Code of Criminal Procedure, and that therefore revision against those orders was incompetent. *Kandhai* v. *King-Emperor* (1), followed. *Emperor* v. *Hemandas Devansingh* (2), referred to.

Mr. *K. N. Tandon*, for the applicants.

Mr. *Hargobind Dayal Srivastava*, for the opposite-party.

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ZIAUL HASAN, J.:—This criminal revision against an order of the learned Sessions Judge of Hardoi came up for hearing before my learned brother SMITH, J.

*Criminal Revision No. 22 of 1937, against the order of Raghubar Dayal, Esq., I.C.S., Sessions Judge of Hardoi, dated the 22nd of December, 1936

(1) (1931) I.L.R., 7 Luck., 501. (2) (1936) A.I.R., Sind, 40.

but as he felt some doubt on the question of law involved he referred it to a Bench. It has now been argued before him and myself.

The facts are that the six applicants were convicted by a Special Magistrate of the first class under sections 147 and 379 in respect of an occurrence of the 26th of April, 1936, and two of them were also convicted on another charge under section 379 of the Indian Penal Code which offence was said to have been committed on the 28th of April, 1936. On the charges relating to the incident of the 26th of April, all the six were sentenced to a fine of Rs.8 each under both the sections and on the separate charge under section 379 the two accused were sentenced to pay a fine of Rs.2 each. All the convicted persons filed a revision in the Court of the Sessions Judge but he dismissed the application holding that as the sentence of fine of Rs.8 was a combination of two punishments an appeal lay under section 415 of the Code of Criminal Procedure but that as no appeal had been filed the revision was incompetent. It was against this order of the learned Sessions Judge that the present application for revision was brought.

The question is whether the fine of Rs.8 imposed on each of the applicants was or was not a combination of two punishments within the meaning of section 415 of the Code of Criminal Procedure. The contention of the learned counsel for the applicants is that section 415 contemplates a combination of two or more punishments of different kinds, e.g., imprisonment and fine, and not two or more punishments of the same kind. We have heard the learned counsel at length but I am unable to accept his contention. In my opinion the law was laid down very correctly by the honourable the present Chief Judge in *Kandhai* v. *King-Emperor* (1), in which a sentence of fines of Rs.50 and Rs.20 inflicted

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under sections 447 of the Indian Penal Code and 24 of the Cattle Trespass Act respectively was held to constitute a combination of two punishments within the meaning of section 415. Section 415 of the Code of Criminal Procedure runs as follows:

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> "An appeal may be brought against any sentence referred to in section 413 or section 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."

Sections 413 and 414 referred to in section 415 are as follows:

> "413. Notwithstanding anything hereinbefore contained there shall be no appeal by a convicted person in cases in which a Court of Session passes a sentence of imprisonment not exceeding one month only or in which a Court of Session or District Magistrate or other Magistrate of the first class passes a sentence of fine not exceeding fifty rupees only."
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> "414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of fine not exceeding two hundred rupees only."

It will be seen that while the punishments mentioned in section 413 are a sentence of imprisonment not exceeding one month passed by a Court of Session and a sentence of fine not exceeding Rs.50 passed by a Court of Session, a District Magistrate or other Magistrate of the first class, the only punishment mentioned in section 414 is that of fine not exceeding Rs.200 inflicted by a Magistrate in a summary trial. If the contention of the learned counsel for the applicants be accepted, it will follow that section 415 can be applicable to the punishments mentioned in section 413 only and not to that mentioned in section 414; but we find that section 415 refers to section 414 also which relates to one kind of punishment only.

Further, section 415 refers to "any two or more" of the punishments mentioned in section 413 or section 414 and the learned counsel could not satisfy us what could be meant by the words "or more" when section 414 mentions only one kind of punishment and section 413 does not refer to more than two kinds of punishment. It is true that the amending Act of 1923 has made alterations in sections 413 and 414 and that as these sections stood before the amendment, both of them mentioned three kinds of punishment, namely, imprisonment, fine and whipping, but the amending Act has left section 415 quite unaltered and I am not prepared to accept the suggestion that the words "or section 414" and "or more" were left in section 415 by inadvertence. The presence of these words in section 415 clearly leads to the conclusion that the punishments referred to in that section include not only punishments of different kinds but also punishments of the same kind.

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The learned counsel for the applicants relied on *Emperor* v. *Hemandas Devansingh* (1), but, as pointed out by my learned brother in his referring order, it is difficult to understand the reasoning on which this decision is based. At any rate on the wording of section 415 I am perfectly satisfied that the law is correctly laid down in *Kandhai* v. *King-Emperor* (2), and that the learned Sessions Judge was right in holding that no revision lay as the sentences of the applicants were appealable.

It was finally argued that so far as the sentences of two of the applicants relating to the incident of the 28th of April, 1936, were concerned they could not be said to come under section 415 of the Code of Criminal Procedure, but the case of these two applicants is covered by section 415A which provides that—

"Notwithstanding anything contained in this chapter, when more persons than one are convicted in one trial,

(1) (1936) A.I.R., Sind, 40. (2) (1931) I.L.R., 7 Luck., 501.

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and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons, convicted at such trial shall have a right of appeal."

As we have held that the sentences of the six applicants were appealable, these two applicants could also have appealed under section 415A.

The result is that in my opinion this application for revision cannot be entertained and I would dismiss it.

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SMITH, J.:—I have read the judgment of my learned brother and agree with his conclusions. Those conclusions seem to me to be the only possible ones with section 415, of the Code of Criminal Procedure, standing as it does. It is not possible to interpret the reference in that section to a combination of punishments as meaning a combination of punishments of different kinds, that is to say, a combination of a punishment of imprisonment with a combination of fine, since the section, after referring to sections 413 and 414, speaks of "any two or more of the punishments therein mentioned", and section 413, as it now stands, mentions only two forms of punishment, imprisonment and fine, and section 414 mentions only one form of punishment, that is to say, fine. For the purposes of section 414, read with section 415, therefore, the only possible combination of punishments is a combination of sentences of fine, as was recognized in the decision of this Court in *Kandhai and others* v. *King-Emperor* (1), and it does not seem possible to interpret a combination of punishments for the purposes of section 414, read with section 415, as meaning a combination of sentences of fine, but to restrict it for the purposes of section 413, read with section 415, to a combination of punishments of different kinds, that is to say, a combination of a sentence of imprisonment with a sentence of fine.

In the present case the majority of the men concerned were sentenced to a fine of Rs.8 each, which appears

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to have been a combination of two punishments one imposed under section 147 and the other under section 379 of the Indian Penal Code, but if a separate sentence of fine had been imposed under each of those sections, it would nevertheless have been a combination of punishments within the meaning of section 415.

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The result is that in the present case the men concerned could have appealed, and as they did not do so, their application in revision cannot be entertained, and I agree with my learned brother that it must be dismissed.

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BY THE COURT (ZIAUL HASAN and SMITH, JJ.):— For the reasons stated by us in our separate judgments, the revisional application is dismissed.

Application dismissed.

REVISIONAL CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge

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LAL NARSINGH PRATAB BAHADUR SINGH (DECREE-HOLDER-APPLICANT) *v.* BABU SHEO NARAIN SINGH (JUDGMENT-DEBTOR-OPPOSITE-PARTY)*

United Provinces Temporary Regulation of Execution Act (XXIV of 1934), sections 6 and 7—Application under section 6 rejected owing to applicant's failure to make necessary deposit within the time allowed—Second application under section 6, if maintainable.

There is no provision in the United Provinces Temporary Regulation of Execution Act (XXIV of 1934), debarring a cultivator from making a second application under section 6 of that Act where an earlier application has been rejected on account of the applicant's failure to deposit one-fourth of the decretal amount as required by section 7 of that Act within the time allowed by the court. If all the conditions prescribed by the Act are satisfied when the second application is made, the second application is maintainable.

Mr. *Hyder Husain*, for the applicant.

Mr. *M. P. Srivastava*, for the opposite-party.

*Section 115 Application No. 157 of 1936, against the order of Babu Mahesh Chandra, Munsif of Rae Bareli, dated the 23rd of May, 1936.