

1924.

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The last question raised is as to what is to become of the Rs. 50,000 which was transmitted in the form of a cheque for Rs. 50,000 on the Bank of Bengal by Pundit Mohan Krishna Dhar, dated 3rd November, 1908, per a letter from him to the Private Secretary of the Lieutenant-Governor. The disposal of that remittance still stands upon the footing set out in the letter of 6th September, 1910, by Mr. Gourlay, the officiating Secretary to the Government of Bengal, to Messrs. Morgan & Co., printed on page 15 of the Record. This letter concludes in the following terms :

" I am, therefore, to request that you will be so good as to inform your clients that the arrangement proposed in November, 1908, has fallen through and that the Accountant-General, Bengal, has been asked to refund them with interest at 4 per cent. (the Bank rate of fixed deposits), the sum of Rs. 50,000 which they had paid as premium."

The right to ingather that sum still stands upon that letter and the money will no doubt be repaid upon demand by the proper authority accordingly.

Their Lordships will humbly advise His Majesty that the appeal be dismissed with costs.

Solicitor for appellant : *J. Page Thomas.*

Solicitors for respondent No. 2 : *Ranken, Ford and Chester.*

REVISIONAL CRIMINAL.

Before Adami and Bucknill, J.J.

BHOLA SINGH

v.

KING-EMPEROR.*

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March, 24.

Criminal Procedure Code 1898, (Act V of 1898),—section 423—Court of appeal—enhancement of sentence by.

* Criminal Revision No. 131 of 1924, from a decision of W. Johnston, Esq., I.C.S., District Magistrate of Shahabad, dated the 12th February, 1924.

Where a Deputy Magistrate sentenced the accused to rigorous imprisonment for two months and to a fine of Rs. 50 or in default one month's rigorous imprisonment, and on appeal the District Magistrate changed the sentence to one of one month's rigorous imprisonment and a fine of Rs. 200 or in default to two months' rigorous imprisonment.

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Held, that the latter sentence amounted to an enhancement of the sentence passed by the trial court for, supposing the fine was not paid, the petitioner would have to undergo three months' rigorous imprisonment and still be liable to the fine.

King-Emperor v. Sagwa(1), followed.

The facts of the case material to this report are stated in the judgment of the Court.

Tribhuan Nath Sahay and *Janak Kishore*, for the petitioner.

ADAMI AND BUCKNILL, J. J.—The only point urged before us in this application is that the change made in the sentence by the learned District Magistrate is not in accordance with law. The petitioner was convicted under section 429, Penal Code, by the Deputy Magistrate of Sasaram and sentenced to rigorous imprisonment for two months and to a fine of Rs. 50 or in default one month's rigorous imprisonment. On appeal the learned District Magistrate has changed the sentence to one of one month's rigorous imprisonment and a fine of Rs. 200 or in default to two months' rigorous imprisonment. On the authority of the case of *King-Emperor v. Sagwa* (1) this latter sentence amounts to an enhancement of the sentence passed by the trial Court, for supposing the fine is not paid the petitioner would have to undergo three months' rigorous imprisonment and still be liable to the fine. To regularise this sentence the imprisonment in default of payment of fine of Rs. 200 will be reduced to rigorous imprisonment for one month in default.

Sentence reduced.

(1) (1901) I. L. R. 23 All. 497.