

deal of harassment on account of the previous prosecution, and it is for the Crown to consider whether the case is a fit one in which the proceedings should be allowed to go on, or whether it is proper to drop the proceedings. It is not competent for us to quash the proceedings on the ground that the original complaint made by the petitioner was more than two years ago.

In the result this application must be dismissed.

Ross, J.—I agree.

*Application dismissed.*

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**PRIVY COUNCIL.\***

SOURENDRA MOHAN SINHA

v.

HARI PRASAD SINHA.

1926.

SHEIKH  
MOHAMMAD  
YASIN  
v.  
KING-  
EMPEROR.

1926.

Feb., 16.

*Order-in-Council—Execution—Successful party not lodging Order—Power of other party to obtain execution—Petition to vary Order-in-Council—Code of Civil Procedure, 1908 (Act V of 1908), Order XLV, rule 15(I).*

Upon cross-appeals to the Privy Council an Order was passed reducing the sum for which the defendants were liable under the decree appealed from, and extending the time within which, under that decree, they were to pay a large sum into court until the expiry of eight months from the receipt of the Order by the High Court. The Order was issued to the defendants, as the party successful, but they failed to lodge it with the High Court. The plaintiffs petitioned for a variation of the Order so as to enable them to execute that part of the decree which was in their favour and was affirmed.

*Held*, that the Order-in-Council having been passed, a variation of its terms could be advised only in exceptional circumstances, and that having regard to the plaintiffs' power under Order XLV, rule 15(I), to obtain execution by a petition to the High Court accompanied by a certified copy of the Order, no variation could be advised.

It is the duty of the party to an appeal to whom the Order-in-Council made therein is issued to lodge it forthwith with the court appealed from.

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\* PRESENT :—Viscount Dunedin, Lord Blanesbury and Sir John Edge.

1926.

SOURENDRA

MOHAN

SINHA

v.

HARI

PRASAD

SINHA.

Petition to vary terms of an Order-in-Council made upon an appeal.

The petitioners (the abovenamed appellants) obtained in a suit in the court of the Subordinate Judge of Bhagalpur a decree against the respondents for Rs. 15,27,997 in respect of a mortgage debt, and a personal decree for Rs. 44,164. On appeal to the High Court at Patna the decree for sale was reduced to Rs. 3,88,673 and the personal decree to Rs. 23,181. Both parties appealed to the Privy Council. By the judgment (1) of the Judicial Committee delivered on July 21, 1925, the appeal by the plaintiffs was dismissed, and the appeal by the defendants was allowed to the extent of setting aside the personal decree. Paragraph 4 of the judgment directed as follows :

" that the time within which the respondents ought to pay into court the sum of Rs. 3,88,673 in respect of the mortgage debt and interest ought to be extended until the expiry of eight months from the receipt by the High Court of His Majesty's Order-in-Council herein."

On July 24, 1925, an Order-in-Council was signed embodying the above paragraph, but the petitioners alleged that they had not had an opportunity of considering the terms of the judgment until August after the Judicial Committee had risen.

It appeared that the Order had been issued to the respondents and that they had not filed it in the High Court. The petitioners alleged that they were not in a position to execute the decree in their favour until the respondents had filed the Order and eight months had expired from their doing so. They now prayed that paragraph 4 might be varied by providing that the sum named should be paid into court by March 31, 1926, and that the carriage of the Order as amended should be given to them.

*Hyam*, for the petitioners (appellants).

*Sir George Lowndes, K.C.*, and *E. B. Raikes*, for the respondents.

(1) *Ante*, p. 135; L. R. 52 I. A. 418.

Reference was made to Order XLV, rule 15(1), and to *Hurrish Chandar Chaudhury v. Kali Sundari Dabia* (1).

The judgment of their Lordships was delivered by—

LORD DUNEDIN.—This is an application to vary the Order-in-Council. The Order has been already passed, and it could only be under exceptional circumstances that their Lordships could humbly advise that another Order should be passed.

In the suit judgment was given for the plaintiffs against the defendants for a certain sum.

On appeal to the King in Council their Lordships humbly advised His Majesty to reduce substantially the sum for which judgment had been given, and to make the sum still decreed payable eight months after the date of the receipt of the Order by the High Court.

The defendants having been substantially successful in the appeal, the Order-in-Council in accordance with the ordinary practice was issued to them: and in ordinary course ought to have been lodged by them in the High Court. They have not however done so, and the plaintiffs cannot therefore so far get execution. Hence this application. The plaintiffs and petitioners have not sufficiently adverted to Order XLV, rule 15(1) of the first schedule to the Code of Civil Procedure. When they found that the defendants were delaying or refusing to lodge the order they could have applied to the High Court with a certified copy of the order and asked for a summary order on the defendants to lodge the order which had been entrusted to them so that execution might follow in terms of the judgment of this Board. This they can still do.

Their Lordships therefore cannot advise His Majesty to grant the prayer of the petitioners: but as

1926.

SURENDRA  
MOHAN  
SINHA  
v.  
HARI  
PRASAD  
SINHA.

(1) (1882) I. L. R. 9 Cal. 482; I. R. 10 I. A. 4.

1926.

SURENDRA  
MOHAN  
SINHA  
v.  
HARI  
PRASAD  
SINHA.

they are clearly of opinion that it was the duty of the defendants in ordinary course to lodge the Order there will be no costs allowed on the petition.

Solicitors for appellants (petitioners): *Barrow, Rogers and Nevill.*

Solicitors for respondents: *Watkins and Hunter.*

## APPELLATE CRIMINAL.

*Before Ross and Kulwant Sahay, J.J.*

MAKHRU DUSADH

v.

KING-EMPEROR.\*

1926.

March, 8.

*Penal Code, 1860 (Act XLV of 1860), sections 380 and 457, separate sentences under, whether bad.*

An accused person convicted of house-breaking followed immediately by theft is liable to punishment under section 457, Penal Code, only.

*Queen v. Tonaokoch* (1), *Queen v. Sahrae* (2), *Jogeen Pullee v. Nobo Pullee* (3), *In the case of Mussahur Dusadh* (4) and *Queen v. Chytun Bowra* (5), followed.

The facts of the case material to this report are stated in the judgment of Ross, J.

*W. H. Akbari* (for the Assistant Government Advocate), for the Crown.

Ross, J.—The appellant broke into a house at night and stole a box and was caught in the act. He has been convicted under sections 457 and 380 of the Indian Penal Code and has been sentenced to consecutive term of three years' rigorous imprisonment under each of these sections. It has been repeatedly held that separate sentences cannot be passed under

\* Criminal Appeal no. 21 of 1926, from a decision of B. Harihar Charan, Assistant Sessions Judge of Purnea, dated the 23rd March 1925.

(1) (1865) 2 W. R. (Cr.) 63. (3) (1866) 6 W. R. (Cr.) 49.  
(2) (1867) 8 W. R. (Cr.) 31. (4) (1866) 6 W. R. (Cr.) 92.  
(5) (1866) 5 W. R. (Cr.) 49.