

**REVISIONAL CRIMINAL.***Before Mr. Justice Bevan-Petman.***RAM KISHEN—Petitioner,***versus***THE CROWN—Respondent.**

1919

July 21.

Criminal Revision No. 482 of 1919.

*Criminal Procedure Code, Act V of 1898, section 345—compounding offence with some of several accused—whether case can proceed against the other accused.*

The complainant in a hurt case compounded the offence with two of the accused before the Court who were therefore acquitted, while the other accused was convicted and sentenced.

*Held.* that the compounding of the offence against two of the accused did not in law have the effect of an acquittal of the remaining accused, and that the conviction was not therefore illegal

*Muthia Natak v. King-Emperor* (1) followed—*Chandra Kumar Das v. Emperor* (2), discussed, and *Imperator v. Mulo* (3), distinguished.

*Revision from the order of N. H. Prenter, Esquire, Sessions Judge, Lahore, dated the 29th March 1919, modifying that of Lala Shankar Das, Magistrate, 1st Class, Lahore, dated the 8th March 1919, convicting the petitioner.*

RAM CHAND, Manchanda, for Petitioner.

MUL CHAND, Public Prosecutor, for Respondent.

BEVAN-PETMAN, J.—Five persons were prosecuted under section 324 of the Indian Penal Code for assaulting and causing injuries to the complainant. Of these one, Mohni, was absconding and proceedings under section 512 of the Code of Criminal Procedure were taken against him. One accused was discharged by the Magistrate trying the case and the complainant compounded the offence with two others who were, therefore, acquitted. The petitioner Ram Kishen was, therefore, alone before the Court and he was convicted under section 424 of the Indian Penal Code

(1) (1917) I. L. R. 41 Mad 328. (2) (1902) 7 Cal. W. N. 176.

(3) (1912) 14 Cr. L. J. 292.

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and sentenced to six months' rigorous imprisonment and a fine of Rs. 50 or, in default of payment, to further rigorous imprisonment for four months. Mohni, the absconder, was subsequently arrested; but the complainant compounded his offence and he, too, was acquitted. The petitioner appealed and was so far successful that the appellate Court, holding that it was not proved that he had used a knife, altered the conviction to one under Section 323 of the Indian Penal Code, but the sentence was maintained.

For the petitioner it is contended that when the offence was compounded in respect of some of the accused it had by operation of law the effect of an acquittal of the remaining accused and that, therefore, the Magistrate had no jurisdiction to continue the trial of, and convict, the petitioner, and that the conviction was illegal. It was further argued that the position was similar to a suit for damages against joint *tortfeasors* where if one defendant pays the damages or the plaintiff obtains satisfaction from him, the remaining defendants are no longer liable. Reliance is placed on *Chandra Kumar Das v. The Emperor* (1) and *Imperator v. Mulo* (2). In the former case the facts were that a complaint was pending against certain accused, only some of whom were before the Court. The complainant intimated to the Court that he had compounded the offence and desired to withdraw his complaint and the Magistrate allowed the withdrawal. The Magistrate had, however, issued process against two other accused, and on their appearance had overruled an objection taken on their behalf, to the continuance of the proceedings, that the offence had been compounded. The Calcutta High Court held that the Magistrate's orders were erroneous and that "if in the case of a compoundable offence the complainant intimates to the Court that he had compounded it and desires to withdraw his complaint, the order passed by the Magistrate allowing the withdrawal is in respect of the offence and not solely in regard to the persons actually under trial at the time, and it seems to us that, in so providing, the law contemplates that all the accused persons should be under trial at the same

(1) (1902) 7 Cal. W. N. 178.

(2) (1912) 14 Cr. L. J. 292.

time before a Judicial Officer unless in some exceptional circumstances, such as their absconding, or sickness, or some such reason the attendance of some of them cannot be obtained." The Court remarked that it did not appear why the Magistrate had not issued process to these accused at the same time as to others and proceeded "we think, therefore, that the complaint is compounded in respect of the offence committed so as to include the parties who are now under trial and that further proceedings against them must be stayed."

The decision in *Muthia Naick v. The King-Emperor* (1) is against the present contention. In that case the decision of a Division Bench is very brief and as follows:—

"Petitioner's Vakil contends that the composition of an offence under section 345 of the Code of Criminal Procedure with one of several accused persons has the effect of an acquittal of all the accused persons. We can find nothing in the section to support this interpretation and if this is really the meaning of the learned Judges in *Chandra Kumar Das, v. The Emperor* (2), we must respectfully dissent. No other authority is quoted by petitioner."

The petition was accordingly dismissed.

I entirely agree with the above decision of the Madras High Court. I doubt whether the learned Judges of the Calcutta High Court intended to lay down the general proposition of law now attributed to them; but if they did, I am not prepared to follow them. The case is not analogous to a suit for damages against joint *tortfeasors*. The second ruling relied on is not really in point. I hold that the contention is bad in law and reject it.

With regard to the sentence the complainant is apparently a man who in the case of some of the accused regards his wrongs as met by an apology, though probably accompanied by money; and under these circumstances I do not think a severe sentence is called for. It is suggested that the petitioner was too poor to meet

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(1) (1917) I.L.R. 41 Mad. 323.

(2) (1902) 7 Cal. W. N. 173.

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the complainant's demands. I see also that the Magistrate awarded the present sentences under section 324, Indian Penal Code, and that although the Lower Appellate Court altered the conviction to one under section 323, Indian Penal Code, it did not reduce the sentence. I think justice will be met by my present order. I maintain the conviction but reduce the term of imprisonment to the period already undergone which is roughly about  $2\frac{1}{2}$  months and maintain the fine. To avoid remanding the petitioner to jail his Counsel tendered Rs. 50, the amount of fine, which money has now been deposited in the office of this Court. I direct that the petitioner be discharged from his bail bond.

*Revision accepted in part.*

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