

CRIMINAL REVISION.*Before Sir Henry Rattigan, Chief Justice.***KABIR BAKHSH, ACCUSED—Petitioner,***versus***THE CROWN—Respondent.**

Criminal Revision No. 467 of 1919.

*Restriction of Habitual Offenders (Punjab) Act, V of 1918, sections 3 and 7—order of restriction following an order of security for good behaviour—whether legal.**Held*, that a restriction order under section 7 of the Restriction of Habitual Offenders (Punjab) Act, following an order for security for good behaviour, is *ultra vires* under the proviso to the section and must be set aside.*Case reported by C. F. Usborne, Esquire, District Magistrate, Sialkot, with his No. 603, dated 10th March 1919*

B. N. KAPUR, for Petitioner.

Nemo, for Respondent.

Brief abstract of the case given by the District Magistrate :—

On 24th August 1918, a chalan under section 110, Criminal Procedure Code, was presented in the Court of *Chaudhari Shivdev Singh*, Honorary Magistrate, 1st Class, Sialkot, against Kabir Bakhsh, son of Rahim Ali Khan, *Rajput*, of village Daud, *tahsil* Raya, district Sialkot. This case was, however, transferred to the Revenue Assistant's Court under District Magistrate's orders. Prescribed notice was given to the man to show cause why he should not be bound down and required to furnish security and bond for Rs. 1,000 for 2 years; and at the same time he was required to show cause why he should not be restricted to his village, as allowed by section 3 (a) of the new Habitual Offenders Act. After hearing the case the Court ordered, on 17th December 1918, that Kabir Bakhsh should furnish security and self-recognizance in Rs. 1,000 with two sureties for 2 years, under section 118, Criminal Procedure Code, and further that he should be restricted to his village Daud for 2 years (he having a sufficient means of livelihood in the village). This case came to

my Court on appeal on 16th January 1919. The evidence for prosecution shows that the accused has been persistently suspected in cases from 1912 to 1918, there being 17 suspicions in all against him. For reasons detailed in my judgment (on file) I rejected the appeal against the order under section 118, Criminal Procedure Code.

As regards the order under Act 5 of 1918, accused is just the sort of man whose movements should be restricted and I upheld the order that he should be restricted to his village for 2 years.

In my judgment I ask for orders whether both sentences can be legally passed, but on second thought I find that section 3 of Act 5 of 1918 refers to procedure and section 7 to the sentence. It is therefore clear that under section 7 both sentences cannot be passed. I therefore request that the order under section 118, Criminal Procedure Code, be cancelled and the restriction order under section 7 of Act 5 of 1918 be allowed to stand. The original and appellate records are forwarded.

SIR HENRY RATTIGAN, C. J.—By order dated the 17th December 1918 the Magistrate of the 1st class directed Kabir Bakhsh to furnish security in the sum of Rs. 1,000 for his good behaviour and in the same order *further* directed that the said Kabir Bakhsh should be restricted to his own village for two years. The District Magistrate has referred the case to this Court on the ground that under section 7 of Act V 1918 both orders cannot stand, and requests that the order under section 118, Criminal Procedure Code, be cancelled and the restriction order under section 7 of Act V, 1918, be allowed to stand. I agree that one of the two orders must be set aside, and I think that it is quite clear from the proviso to section 7 that the order which must be set aside is the order for restriction. The proviso is to the effect that "the Magistrate shall not make an order of restriction against any person against whom he makes an order under section 118 of the Code of Criminal Procedure, 1898, requiring such person to execute a bond for his good behaviour." In the present case it was only after the accused had

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been directed to furnish security under section 118 of the Code that he was further directed to restrict his movements to the limits of his village.

I accordingly set aside the latter part of the Magistrate's order, but my order will in no way affect the direction by the Magistrate that the accused is to furnish security for his good behaviour.

Revision accepted.

CRIMINAL REVISION.

Before Mr. Justice Martineau.

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July 14.

MAHANDU AND OTHERS — *Petitioners,**versus*THE CROWN—*Respondent.*

Criminal Revision No. 228 of 1919.

Criminal Procedure Code, Act V of 1898, section 337—Accomplice—statement on oath by an accused person who has accepted a pardon, but has not been discharged—whether evidence against the other accused—case not exclusively triable by Sessions Court.

M., one of the accused persons, was offered a pardon on 6th June 1918. On the 11th June the case was *chained* by the Police and *M.* was entered as one of the accused persons in the *chalan* as well as in the opening sheet of the Magistrate's proceedings. *M.*'s evidence was recorded by the Magistrate on the 4th July. The case was not one exclusively triable by the Court of Session or High Court.

Held that, as the case was one not exclusively triable by a Court of Session, section 337 of the Code was inapplicable.

Held also that, as there had been no verbal or written order of discharge by the Magistrate, *M.* was still an accused person on the 4th July when he was examined and his evidence was consequently not admissible against the other accused.

Bann Singh v. Emperor (1), referred to.

Sardar Khan v. Emperor (2), distinguished.