

APPELLATE CRIMINAL.

Before Mr. Justice Duckworth.

1924

May 29.

IN RE ABDULLA, ACCUSED.*

Criminal Procedure Code (V of 1898), section 408 (b)—Appeal from a sentence exceeding four years passed by a Magistrate specially empowered—Sessions, Judge entertaining such appeal, effect of—Section 530 (r).

The appellant was sentenced by a Magistrate specially empowered under section 30, Code of Criminal Procedure, to a term of imprisonment exceeding four years; and his petition of appeal was sent from the jail to the Sessions Court instead of the High Court. The Sessions Court overlooked the provisions of section 408 (b) of the Criminal Procedure Code and summarily dismissed the appeal on the merits.

Held, that under the provisions of section 530 (r), Code of Criminal Procedure, the proceedings in the Sessions Court were void; and the accused still had a right of appeal to the High Court.

King-Emperor v. Yena, 4 L.B.R., 49—*distinguished*.

King-Emperor v. Nga Sit Cho, 4 B.L.T., 271—*referred to*.

DUCKWORTH, J.—In this case Abdulla was convicted by the Western Subdivisional Magistrate, Mandalay, who has special powers, under section 394, Indian Penal Code, and was sentenced to five years' rigorous imprisonment. Further, under section 9 (1), Habitual Offenders' Restriction Act, he was restricted to Mandalay Town, and ordered to report himself daily at 8 p.m. to the officer-in-charge of No. 13 Police Station, for two years from his release from jail. His petition of appeal was sent from the Mandalay Central Jail to the Sessions Court, Mandalay, whereas, of course, under section 408 (b), Criminal Procedure Code, it should have been submitted to this Court. This fact was apparently overlooked by the learned Sessions Judge, who dismissed Abdulla's appeal summarily on 12th April 1924.

* Criminal Revision No. 240-a of 1924 (at Mandalay) from the order of the Western Subdivisional Magistrate, Mandalay, in Criminal Trial No. 22 of 1924.

In so doing he clearly acted without any jurisdiction, and under section 530 (*r*) his proceedings were void, for I take it that the word Magistrate in that section will include a Sessions Judge. The accused Abdulla has therefore still a right of appeal to this Court, which by no fault of his own is now time-barred, the date of his conviction being March 17th, 1924.

The case of *King-Emperor v. Yena* (1) is no guide as to whether or not the learned Sessions Judge's order in the present case must be set aside, as, in *that* case, the learned Judge acquitted the appellant.

The case of *King-Emperor v. Nga Sit Cho* (2) is not parallel, but in *that* case, a trial, void for want of jurisdiction, was set aside, and a new trial was ordered.

I have not been able to find any exactly parallel cases nor has the learned Government Prosecutor, who appeared for the Crown.

The appellate proceedings before the learned Sessions Judge are quashed, as being void "*ab initio*" and it is hereby ordered that the prisoner's appeal be taken on to the file of this Court, and be dealt with according to law. The question of the time-bar can then be considered.

(1) (1907-08) 4 L.B.R., 49.

(2) (1911) 4 B.L.T., 271

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 DUCKWORTH,
 J.