

APPELLATE CRIMINAL.

Before Mr. Justice Duckworth.

MAUNG PO LONE

v.

KING-EMPEROR.*

1924

May 16.

Revisionary jurisdiction of the High Court—Order under Upper Burma Ruby Regulation, 1887—Criminal Procedure Code, making no specific provision for appeals under the Regulation.

Held, that the High Court has power on appeal or revision under the Criminal Procedure Code to question the judgments or orders of Magistrates acting under the Upper Burma Regulation, 1887, even though under the Regulation in question no specific provision appears to have been made for either appeal or revision.

This was an application for revision of the order of the Headquarters Magistrate, Mogôk, passed under the Upper Burma Regulation, 1887, against which the applicant had in due course preferred an appeal to the Sessions Court, Shwebo, but which had been summarily dismissed. This appears from the order of the High Court reported below.

T. K. Banerjee—for Petitioner.

Aiyangar—for the Crown.

DUCKWORTH, J.—In this case a certain Maung Kin was convicted under section 6, clause (1) of the Upper Burma Ruby Regulation, 1887, and it was ordered that he should undergo three months' rigorous imprisonment, and that the sapphire stone in question should be confiscated to the Government.

In the course of the trial Maung Po Lon, the present applicant, gave evidence that he had purchased the stone, within the ruby area, from Maung Kin, and that he was therefore, under the Act, "the owner."

* Criminal Revision No. 178B of 1924 (at Mandalay from the order of the headquarters Magistrate, Mogôk, in Criminal Regular Trial No. 81 of 1923.)

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On appeal to the Sessions Court, the conviction was altered by the Sessions Judge to one under the second clause of section 6 of the Regulation, and the sentence was reduced to one month's rigorous imprisonment. About the same time it appears that that the original accused, Maung Kin, applied to the Commissioner of the North-West Border Division sitting as a High Court, and prayed that that part of the order referring to the confiscation of the stone should be set aside. The Commissioner refused to take any action and referred Maung Kin to the Magistrate or the Sessions Judge. Application was then made by Maung Po Lone, the present applicant, to the Magistrate praying that the sapphire in question should be restored to him and the auction sale which had been advertised in the meantime be stayed. The learned Magistrate held that there was no provision under which he could revise his own order and dismissed his application. Maung Po Lon then appealed to the Sessions Court, which, in turn, set aside the Magistrate's order confiscating the stone, and directed the Magistrate to proceed with the case in accordance with section 8 of the Upper Burma Ruby Regulation. The Magistrate then recorded evidence and held that the petitioner Maung Po Lone was a *bonâ fide* purchaser, and that, inasmuch as he had acted *bonâ fide*, he was entitled to consideration, and he therefore, in lieu of ordering confiscation of the stone, gave him the option of paying the sum of Rs. 1,750, within one month from the date of the order, or after the conclusion of the appeal, if any.

Against this order, Maung Po Lon once more appealed to the Sessions Court. The appeal was dismissed summarily.

It is against this order that Maung Po Lon has come up to this Court on revision, his object being to

have the order of confiscation cancelled and the order of payment in lieu of confiscation set aside, and to procure that the sapphire stone in question should be handed over to him. In any case, he contends that the amount ordered to be paid in lieu of confiscation was excessive. The sale of the stone has in the meantime been stayed.

When Mr. Banerjee started to argue his case, Mr. Aiyangar who was appearing for Mr. Lütter on behalf of the Crown, raised a preliminary objection that against orders passed under the Upper Burma Ruby Regulation, 1887, the High Court has no revisional powers. Mr. Aiyangar referred me to section 1(2) of the Criminal Procedure Code, and to the patent fact that no provision appears to have been made in the Regulation either for appeal for revision

But it must be noted that a person convicted under section 6 of the Regulation is liable to be imprisoned for one year for the first offence, and to two years for any subsequent offence, or to fine or to both imprisonment and fine. This is under clause (1). Under (2), he is liable to be imprisoned for one month for a first offence and six months for any subsequent offence. He is liable to be tried before a Magistrate of the first class, or, in a stone tract, before a Magistrate of the second class specially empowered in that behalf. To argue that in such a case a convicted person would have no right to appeal under the provisions of the Code of Criminal Procedure, because there is no specific provision for an appeal under the Regulation would, I think, be absurd. The same remarks, it seems to me, would apply to revisions. Moreover, the High Court has very wide powers of revision, and, so far as I can find (no authorities have been quoted before me), the only Acts which are at all expected from the

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revisional jurisdiction of a High Court are the Press Act, the Extradition Act, and the Reformatory Schools Act, and this only in regard to certain orders passed by Lower Courts. My learned brother Pratt, J., in Criminal Revision Case No. 142 of 1923 (unreported) took up, and dealt with, a revisional application under this Regulation. It may be that the point in question was not raised before him, or it may be that he considered that there was no doubt that a revisional application would lie. On the few materials before me, I am of the opinion that applications for revision of orders passed under this Regulation by which not only a person is convicted and sentenced to imprisonment or fine, but also stones are confiscated, do lie, to the High Court, and that, therefore, I have jurisdiction to hear this application. The matter, however, is, in this instance, not of any real importance, since, after perusing the record, I am of the opinion that there are no merits in the application. Section 8 of the Regulation is perfectly clear. It provides, in such cases as this, for confiscation, or, in lieu of confiscation for payment by the owner, in order that he may be able to keep the stone. The order under revision was therefore quite justifiable, and I do not consider that a sum of Rs. 1,750 for a stone worth about Rs. 3,500, was in any way excessive. An offence under section 6 of the Regulation was committed by the applicant's vendor in connection with this sapphire, and therefore, even though the applicant has acted *bonâ fide*, the Magistrate had no choice but to apply section 8. In doing so moreover he chose the more lenient course. The application is dismissed and the sale, which this Court has stayed, will proceed, unless the applicant makes the payment of Rs. 1,750 within one month from the date of this order.