

## APPELLATE CRIMINAL.

*Before Mr. Justice Pratt.*

L. M. ISMAIL

v.

KING-EMPEROR.\*

1927

Feb. 18.

*Criminal Procedure Code (V of 1898), sections 421, 422—Appeal against conviction on more than one charge—Summary dismissal, in respect of one conviction, of the appeal, whilst admitting it on the other conviction—Practice undesirable but not illegal.*

Where, in the accused's appeal against conviction on two charges in one trial, the Appellate Court summarily dismissed the appeal in respect of one charge whilst admitting the appeal in respect of the other charge, held that the practice was not illegal, though it is undesirable.

*Sanyal*—for the Applicant.

*Tun Byu*—for the Crown.

PRATT, J.—Applicant was convicted in one trial on two separate charges of cheating.

On appeal the Sessions Judge summarily dismissed the appeal on one charge and admitted the appeal on the other.

The appeal on the second charge was ultimately successful.

It is contended that the procedure of the Sessions Judge in disposing of the appeal piecemeal is irregular.

It is certainly unusual, and in my opinion undesirable, but I am not prepared to say that it is illegal.

Accused was tried for two separate offences on two charges in one trial. He could have been legally tried in a separate proceeding on each charge.

Each offence was distinct and the subject of a distinct sentence.

I fail to see that the applicant was in anyway prejudiced by the procedure adopted.

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\* Criminal Revision No. 23B of 1927 (at Mandalay).

The advocate was heard before the appeal against the conviction on one charge was dismissed.

Had the appeal been admitted on both charges, instead of one only, all that the Judge would have done would have been to rehear the arguments for appellant and dismiss the appeal on the one charge without hearing the advocate for the Crown.

The admission of an appeal on the question of sentence only has been held to be illegal, but that is a different matter.

As regards the merits the learned Sessions Judge has given good reasons, which it is unnecessary to repeat, for upholding the conviction.

Applicant obtained an advance for purchase of a motor-car from the Government on the security of a mortgage of the car.

When he obtained the advance he had already mortgaged the car to a Chetty.

It is obvious Government would not have made the advance, had it been aware that the car was already mortgaged.

The omission to disclose the fact of the mortgage was clearly a dishonest concealment.

The omission to disclose the mortgage was likely to cause damage in property to Government, for it was always possible that Government would be unable to realise the security.

Even if the applicant intended to pay off the first mortgage that does not render his act honest.

The trial Court has considered the extenuating circumstances in passing sentence.

The application for revision is dismissed.

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