

sentence in excess of that which he is empowered under the Criminal Procedure Code to pass.

The conviction and sentence passed on Nga Mya are set aside and it is ordered that he be retried by a competent Magistrate.

This case is similar to the same Magistrate's Criminal Regular No. 164 of 1928 (1) in that oral evidence has wrongly been admitted to prove the fact and particulars of the accused's conviction and the fact and conditions of the grant of a remission of sentence. I have explained in my order in Criminal Revision No. 87B of 1929 (1) which is a review of that case, the nature of the evidence required in cases under section 227, Indian Penal Code. The Magistrate who retries this case should see that proper evidence is produced. He should also in passing sentence, if the accused is convicted, take into consideration the imprisonment suffered by the accused under the sentence that is now set aside.

1929
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 NGA MYA
 v.
 KING-
 EMPEROR.
 ———
 CARR, J.

APPELLATE CIVIL.

Before Mr. Justice Maung Ba,

MAUNG PE KYE

v.

MA SHWE ZIN.*

1929
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 Mar. 14.

Civil Procedure Code (Act V of 1908), O. 33, rr. 2, 5—Pauper's application, strict conformity to rules essential—Wrong valuation of subject-matter—Rejection of application inevitable—No discretion vested in Court—Fresh application.

A pauper in applying for permission to sue as a pauper is required strictly to conform to the provisions of Order 33 of the Civil Procedure Code. If in his application he has not calculated the court-fee value in accordance with the requirements of Court Fees Act and O. 7, r. 1 of the Civil Procedure Code, he violates clause (a) of rule 5 of Order 33. Under such circumstances, the Court has no discretion and must reject the application. The applicant may file a fresh application, if in time.

* Civil Revision No. 281 of 1928 from the order of the District Court of Bassein in Civil Miscellaneous Case No. 74 of 1928.

(1) (1929) 7 Ran. 355.

1929

MAUNG PE
KYE2.
MA SHWE
ZIN.

S. C. Das for the applicant.

N. N. Burjorjee for the respondent.

MAUNG BA, J.—Appellant's application for permission to sue as a pauper was rejected by the District Judge of Bassein on the ground that the value for the purposes of court-fee had been wrongly calculated.

Applicant claims the entire estate of deceased U Tha Ko. According to the schedule filed, the estate consists largely of paddy holdings. There can be no doubt that the values of such holdings should have been calculated at five times the land revenue under clause V (b) of section 7 of the Court Fees Act. So the valuation in the application is incorrect.

The question is whether such a wrong calculation offends clause (a) of rule 5 of Order 33 of the Code of Civil Procedure. A Court shall reject an application for permission to sue as a pauper where it is not framed in the manner prescribed by rule 2. That rule lays down that such applications shall contain the particulars required in regard to plaints in suits. Rule 1 of Order VII enumerates such particulars and one of them is a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and court-fees so far as the case admits. Section 7 of Court Fees Act prescribes the mode of computing court-fee value. In the present case applicant has not calculated the court-fee value in accordance with that section. When such a defect occurs in an application for leave to sue as a pauper rule 5 of Order 33 leaves the Court no discretion but it must reject the application. The District Court's order was justified. Applicant appears to have still a right to present a fresh application.

The present application for revision is accordingly dismissed with costs two gold mohurs.