

1929  
 NGA PO  
 NGWE  
 v.  
 KING-  
 EMPEROR.  
 CARR, J.

to accept it on grounds no stronger than are to be found in the section. I am not prepared, therefore, to hold that the section has retrospective effect.

I therefore reduce the sentence passed on Nga Po Ngwe to one of rigorous imprisonment for four months and twenty-six days.

## APPELLATE CRIMINAL.

Before Mr. Justice Carr.

1929  
 Mar. 12.

NGA MYA

v.

KING-EMPEROR.\*

*Magistrate's powers to pass sentence—Enhanced punishment under s. 2 of the Burma Criminal Law Amendment (Conditionally Released Prisoners) Act (Burma Act III of 1928)—Penal Code (Act XLV of 1860), s. 227—Enhanced punishment illegal, if beyond magistrate's powers.*

S. 2 of Burma Act III of 1928 provides for enhanced punishment of rigorous imprisonment for a term which may extend to one year for absconding in violation of condition of remission of punishment. But it is illegal for a magistrate purporting to punish the accused under s. 227 of the Indian Penal Code and s. 2 of the Burma Act III of 1928 to pass a sentence in excess of that which he is empowered to pass.

CARR, J.—The respondent Nga Mya has been convicted under section 227 of the Penal Code and sentenced under that section and section 2 of Burma Act III of 1928 to rigorous imprisonment for two years, eight months and six days. The Magistrate who passed this sentence has ordinary first class powers and the maximum term of imprisonment that he can impose for one offence is two years. The sentence is therefore illegal. There is nothing in either section 227 of the Penal Code or Burma Act III of 1928 to empower any Magistrate to pass a

\* Criminal Revision No. 86B of 1928 being a review of the order of the third Additional Magistrate of Taungdwingyi in Criminal Regular No. 159 of 1928.

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

## APPELLATE CIVIL.

*Before Mr. Justice Maung Ba,*

MAUNG PE KYE

v.

MA SHWE ZIN.\*

1929  
 ———  
 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.