

1931  
 MAHOMED  
 YACOOB  
 v.  
 P.L.R.M.  
 CHETTYAR  
 FIRM.  
 PAGE, C.J

that ruling. In my opinion, the law was correctly stated in *Rajendra Prosad Jha v. Upendra Nath Jha* (1) and *Maung Olin Tin v. P.R.M.P.S.R.M. Chettyar Firm* (2). For these reasons, in my opinion, the appeal fails, and must be dismissed with costs 10 gold mohurs.

SEN, J.—I agree.

## APPELLATE CRIMINAL.

*Before Mr. Justice Baguley.*

### KING-EMPEROR

71.

NAN E.\*

1931

July 21.

*Criminal Procedure Code (Act V of 1898), ss. 123, 397—Penal Code (Act XLV of 1860), s. 64—Sentence under s. 123—Subsequent conviction for theft—Offence prior to sentence under s. 123—Sentence of fine and in default imprisonment—Latter sentence, when to run.*

Where the accused was sentenced to one year's rigorous imprisonment in default of furnishing security under s. 123 of the Code of Criminal Procedure and was subsequently convicted of the offence of theft committed prior to the passing of the order under s. 123 for which he was sentenced to pay a fine or in default three months' rigorous imprisonment, and the fine was not paid.

*Held*, that the sentence of imprisonment in default of payment of fine must run from the expiry of the sentence under s. 123.

*King-Emperor v. Nga Pye*, I.L.R. 9 Ran. 110—*referred to*.

BAGULEY, J.—The accused Nan E was first sentenced to one year's rigorous imprisonment in default of furnishing security under section 123, Criminal Procedure Code. Next he was sentenced to two months' rigorous imprisonment for offences under Indian Penal Code 323 and 336 committed prior to the passing of the order under section 123. These sentences had to take effect immediately,

(1) 19 C.W.N. 633.

(2) (1929) I.L.R. 7 Ran. 425.

\* Criminal Revision No. 487A of 1931 of the order of the 2nd Additional Magistrate of Bogale in Criminal Trial No. 52 of 1930.

under the proviso (2) to section 397, Criminal Procedure Code. For two months they would run concurrently with the imprisonment under section 123, Criminal Procedure Code and so, in effect, he suffered in no way at all from being so convicted.

After this, in Criminal Regular No. 52 of 1930 of the 2nd Additional Magistrate, Bogale, he was convicted yet again under Indian Penal Code 379 for an offence committed prior to the passing of the order under Criminal Procedure Code 123, and sentenced to pay a fine of Rs. 75 or in default three months' rigorous imprisonment. The fine has not been paid and the question arises as to the date from which the sentence of three months' rigorous imprisonment in default is to run.

Section 64, Indian Penal Code, seems to be quite clear. The three months is to be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable in commutation of a sentence. The section of the Criminal Procedure Code which deals with the question of the dates from which sentences are to run is section 397. It has been laid down by a Bench of this Court in *King-Emperor v. Nga Pye* (1) that the word 'sentence' in section 397 and its provisos of the Criminal Procedure Code includes an order of committal or detention in prison under section 123 of that Code. The three months' imprisonment in default passed in this case therefore must run from the expiry of the order of detention passed under Criminal Procedure Code 123.

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(1) (1931) I.L.R. 9 Ran. 110.