REVISIONAL CRIMINAL.

Before Mr. Justice Harrison.

1926

Feb. 13.

THE CROWN, Petitioner

versus

SALIG RAM AND ANOTHER, Respondents.

Criminal Revision No. 1499 of 1925.

Criminal Procedure Code, Act V of 1898, section 264—Summary trials—appealable sentence—whether a formal charge is necessary.

The accused was tried by the Magistrate summarily under section 381 of the Indian Penal Code and an appealable sentence was inflicted. No written charge having been drawn up, the Sessions Judge ordered a retrial.

Held, that in no summary trial, whether it be appealable or non-appealable, need a formal charge in writing be framed.

Tittu Sahu v. *Emperor* (1), *Kuchi* v. *Emperor* (2), and Ratan Lal's Bombay High Court Unreported Cases, page 768, followed. Rules and Orders of the High Court, Volume II, page 180, referred to.

Natabar Khan v. *King-Emperor* (3), dissented from.

Application for revision of the order of Lala *Jaswant Rai* Taneja, *Sessions Judge, Amritsar, dated the 8th July 1925, reversing that of* Rai Sahib Lala *Amar Nath, Additional District Magistrate, Amritsar, dated the 14th May 1925, and quashing the conviction and sentence and ordering retrial.*

RAM LAL, Assistant Legal Remembrancer, for Petitioner.

Nemo, for Respondents.

(1) (1920) 57 I. C. 454. (2) (1905) 2 Cr. L. J. 375.
(3) (1924) All I. R. (Cal.) 63.

JUDGMENT.

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THE CROWN v. SALIG RAM.

HARRISON J.

HARRISON J.—Although this case is of small importance in itself, the question involved affects a very large number of Courts exercising summary powers in this Province. The accused was found guilty after a summary trial under section 381 and sentenced to three months' imprisonment—an appealable sentence. No written charge was drawn up. He appealed to the Sessions Judge, who followed *Natabar Khan* v. *King-Emperor* (1) and ordered a retrial.

Against this order the Crown has presented a petition for revision, and *Diwan* Ram Lal has drawn my attention to the wording of sections 262, 263, 264 and 265 of the Criminal Procedure Code, and also to certain rulings, Ratan Lal's Bombay High Court Unreported Cases, pages 768, *Tittu Sahu* v. *Emperor* (2); *Kuchi* v. *Emperor* (3) and also to Volume II, page 180 of the Rules and Orders of this Court, in which it is stated that the framing of a formal written charge is not necessary. The Calcutta ruling, which has been followed by the Sessions Judge, is very clear, and it lays down that whereas in regard to non-appealable cases it is stated in so many words in section 263 that no charge need be framed, in section 264, which deals with appealable cases, there are no words to this effect, and this omission when coupled with the words of section 262 is tantamount to a clear direction that the ordinary procedure in warrant cases is to be followed and a formal charge is to be framed. The *ratio decidendi* I understand to be the silence of section 264, but this section is also silent

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regarding the preparation of a record of evidence except in so far that sub-section (2) states that the judgment shall be the only record in such cases. In order to reconcile the words of section 264 (2), with *Natabar Khan* v. *King-Emperor* (1) it appears to me to be necessary to hold that the charge is not part of the record—or that what is usually called the record of the evidence is no part of "the record" in the sense in which the words are used in section 264 (2), or, that, in spite of the wording of section 264 (2) the silence of section 264 (1) regarding the charge and the record of the evidence necessitates the preparation of both, while 264 (2) forbids their incorporation into the record of the case. In my opinion, sub-section (2), especially when read with the opening words of section 265, makes it clear that the judgment and the judgment alone, embodying as it does the substance of the evidence and the particulars mentioned in section 263, is the self-contained record of the case, and apart from this record, there is no other, and what is more there is no document, which can be defined or described as a portion of a record.

It is clear from the unreported Division Bench judgment of the Bombay High Court that the contrary view to that contained in *Natabar Khan* v. *King-Emperor* (1) was taken by two Judges of that Court and in *Tittu Sahu* v. *Emperor* (2), a Judge of the Patna Court took the same view as the Bombay Court. *Kuchi* v. *Emperor* (3), which is a judgment of the Burma Chief Court, deals with a kindred question of the record of evidence, and in our own Rules and Orders emphasis is laid on the necessity of charging the accused in an appealable summary

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case but it is explained that the charge need not be reduced to writing. With all respect to the Judges of the Calcutta High Court who gave the decision, which has been followed by the Sessions Judge of Amritsar, I find that the language of sections 264 and 265 when read with sections 262 and 263 makes it clear, although this is nowhere said in so many words, that in no summary trial, whether it be appealable or non-appealable, need a formal charge in writing be framed.

I therefore set aside the order of the Sessions Judge in this case and direct that the appeal be heard on the merits.

N. F. E.

Revision accepted.

APPELLATE CIVIL.

Before Mr. Justice Harrison and Mr. Justice Jai Lal.

1926

March 4

RAGHA RAM AND ANOTHER (PLAINTIFFS)
Appellants
versus
DEWA SINGH AND OTHERS (DEFENDANTS)
Respondents.

Civil Appeal No. 391 of 1922.

Punjab Pre-emption Act, I of 1913, section 15 (c), thirdly and fifthly—where plaintiff and vendee each possess a superior qualification—whether plaintiff's additional inferior *qualification can give him a preferential claim.*

Section 15 of the Punjab Pre-emption Act lays down the order in which pre-emptors stand and once the place of a pre-emptor has been determined it cannot be affected by the fact that he does or does not hold any further or additional qualification, which, in the absence of the first or main qualification, would be taken into account.