

REVISIONAL CRIMINAL.

Before Mr. Justice Broadway.

MUSSAMMAT AISHA AND OTHERS (ACCUSED)

Petitioners

versus

THE CROWN, THROUGH }
DALIP SINGH AND } Respondents.
OTHERS }

Criminal Revision No. 1789 of 1925.

Punjab Municipal Act, III of 1911, section 153—persons sentenced to pay fine in futuro—Joint trial of four persons living separately for breach of notice issued to each separately—Legality of—Criminal Procedure Code, Act V of 1898, section 239.

Notice was issued to four prostitutes carrying on their trade as such, under section 153 of the Municipal Act, directing them to prevent disorderly persons from frequenting their house and using it as a brothel. After a complaint was lodged against them they were all tried together and found guilty of a breach of notice, and sentenced to pay a fine of Rs. 3, for every day commencing from the day after the date of judgment, if they should allow their houses to be used as brothels and allow disorderly persons to come there.

Held, that the object of section 153 of the Municipal Act is to punish a breach of a notice under that section, such breach having been completed at the time of conviction and that punishments to take effect in the future in the event of any future breach are not warranted by law.

Crown v. Gurditta (1), *Crown v. Dharma Shah* (2), *Queen-Empress v. Veerammal* (3), *Ram Krishna v. Mohendra Nath* (4), *Emperor v. Wazir Ahmad* (5), *Emperor v. Amir Hasan Khan* (6), and *In re Limbaji Tulsiram* (7), referred to.

(1) 13 P. R. (Cr.) 1903.

(2) 8 P. R. (Cr.) 1916.

(3) (1892) I. L. R. 16 Mad. 230.

(4) (1900) I. L. R. 27 Cal. 565.

(5) (1902) I. L. R. 24 All. 309.

(6) (1918) I. L. R. 40 All. 569.

(7) (1896) I. L. R. 22 Bom. 766.

Held further, that the trials contravened the provisions of section 239, Criminal Procedure Code, as the accused could not be said to have committed the same offence in the course of the same transaction.

Application for revision of the order of Lt.-Col. R. W. E. Knollys, Sessions Judge, Ambala, dated the 29th August 1925, affirming that of A. Isar, Esquire, Magistrate, 1st class, Simla, dated the 20th July 1925, imposing on each one of the petitioners a daily fine.

SHAMAIR CHAND. for Petitioners.

Nemo, for Respondent.

JUDGMENT.

BROADWAY J.—This petition for revision has arisen out of a prosecution launched by certain persons living in Simla under section 153 of the Municipal Act. It appears that there were four prostitutes living in Simla carrying on their trade as such. Notice was issued to each of them under section 153 of the Municipal Act directing them to prevent disorderly persons from frequenting their house and using it as a brothel. Some eight or nine months after this notice had been issued the present complaint was lodged. They were found guilty of a breach of the notice issued under section 153 and each of them was sentenced to pay a fine of Rs. 3 for every day *commencing from the day after the date of judgment* if they should allow their houses to be used as brothels and allow disorderly persons to come there.

A petition for revision filed by them having been dismissed by the learned Sessions Judge of Ambala, they have come up to this Court in revision through Mr. Shamair Chand who has advanced two points for consideration :-

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Firstly, he has urged that the sentence of fine *in futuro* is illegal and unjustified. In support of his contention he has cited various authorities commencing with *Crown v. Gurditta* (1), and ending with *Crown v. Dharma Shah* (2) so far as this Court is concerned, *Queen-Empress v. Veerammal* (3), *Ram Krishna v. Mohendra Nath* (4), *Emperor v. Wazir Ahmad* (5), *Emperor v. Amir Hasan Khan* (6), and *In re Limbaji Tulsiram* (7). All these authorities support Mr. Shamair Chand's contention and show that the sentence passed directing the petitioners to pay a fine *in futuro* is illegal.

The next point raised was that the trials contravened the provisions of section 239, Criminal Procedure Code. This point was taken before the learned Sessions Judge and was considered by him. It was decided against the petitioners on the ground that they were persons accused of the same offence committed in the course of the same transaction. I am unable to follow the learned Sessions Judge in this. The four petitioners lived in four separate houses, although it appears that the houses adjoined one another. The notice was directed to each of the petitioners separately to take certain steps in connection with the building occupied by each of them. I am unable to see that the failure to obey the notice issued can be regarded as one transaction. It follows therefore that the trial of the four petitioners was illegal.

I therefore set aside the conviction and sentence and remand the case to the Magistrate who will proceed against each of the petitioners separately. It should be borne in mind that the object of section 153

(1) 13 P. R. (Gr.) 1903.

(2) 8 P. R. (Cr.) 1916.

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of the Municipal Act is to punish a breach of a notice under that section, such breach having been completed at the time of conviction and that punishments to take effect in the future in the event of any future breach are not warranted by law.

A. N. C.

Revision accepted.

Case remanded.

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Fforde.

HARCHARAN DAS (DEFENDANT) Appellant

versus

MALAWA RAM (PLAINTIFF) } Respondents.
AND ANOTHER (DEFENDANT) }

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Feb. 4.

Civil Appeal No. 118 of 1922.

Punjab Pre-emption Act, I of 1913, section 3 (3)—Adampur, tahsil Jullundur—whether a town.

Held, that the lower Courts had rightly decided on the material before them that Adampur is a town for the purposes of the Punjab Pre-emption Act.

Second appeal from the decree of Lt.-Col. J. Frizelle, District Judge, Jullundur, dated the 20th October 1921, affirming that of M. Jalal-ud-Din, Munsif, 1st Class, Nawanshahr, district Jullundur, dated the 13th June 1921, awarding the plaintiff possession by pre-emption of the house in dispute, etc.

BADRI DAS, for Appellant.

M. L. PURI, for JAGAN NATH, AGGARWAL, for Respondents.