

1928  
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 MUHAMMAD  
 BAKHSH  
 v.  
 THE CROWN.  
 ———  
 THE CHAND J.

which the Magistrate, though a member, has not taken part in directing or sanctioning the prosecution. Mr. Anant Ram principally relies on *Gopi Chand v. King-Emperor* (1), but in that case the prosecution had not been directed by the Magistrate concerned and it was definitely ruled, that if it had been so, the Magistrate would have been disqualified from trying it. In my opinion the trial of the petitioner by Mr. Daulat Ram, *Budhwar*, was illegal and the conviction cannot stand.

I accept the petition for revision and set aside the trial. The fine, if paid, will be refunded. The case will be remitted to the District Magistrate for re-trial by another Magistrate of competent jurisdiction.

*N. F. E.*

*Revision accepted.*

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**REVISIONAL CRIMINAL.**

*Before Sir Shadi Lal, Chief Justice.*

KARIM BAKHSH—Petitioner,

*versus*

THE CROWN—Respondent.

Criminal Revision No. 1450 of 1923

*Criminal Procedure Code, Act V of 1898, section 562—  
 Release on probation—whether accused can be fined.*

*Held*, that where an offender is released on probation under section 562 of the Criminal Procedure Code, the imposition of a fine is illegal.

*Case reported by L. A. Bull, Esquire, District Magistrate, Dera Ghazi Khan, with his No. 1592, dated 25th July 1928.*

*Report of District Magistrate.*

The facts of the case are as follows:—

Karim Bakhsh, Accused, aged 17 years, was servant of the complainant *Mussammatt Rasti* for 10 or

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11 years and thus knew well where she used to keep her ornaments. One month before the occurrence he left her service. On 2nd May, 1928, when she was away from her house, he opened the lock and stole certain ornaments. When the woman returned home she found that the ornaments in her house had been stolen. She informed one Asa Ram, goldsmith, of Dajul in the presence of Dula Ram who is also a goldsmith of the same place. Four or five days after the occurrence the accused took the stolen ornaments to the said Dula Ram who suspected them to be stolen ones. He sent for the complainant and the latter identified the ornaments. Dula Ram reported the matter to *Mukhi* Narain Das, *Zaildar*, who sent for the accused. The latter admitted his guilt and produced one of the ornaments which he had still with him. The *Zaildar* took the parties together with the stolen property to the officer in charge of Police Station, Dajul. First information Report No. 33/1-5 was recorded and the accused was after necessary investigation challaned under 454, Indian Penal Code, to the Court of *Lala* Parma Nand, Tahsildar and Magistrate, 2nd class, Jampur. The witnesses produced on behalf of the prosecution corroborated the prosecution story and the accused too confessed before the Court and begged for pardon. He did not recall any of the prosecution witnesses for cross-examination and produced no defence.

The accused, on conviction by *Lala* Parma Nand, Tahsildar, Jampur, exercising the powers of a Magistrate of the 2nd class in the Dera Ghazi Khan District, was sentenced, by order, dated 29th of May, 1928, under section 454 of the Indian Penal Code, to pay a fine of Rs 25 and also directed to furnish security under section 562, Criminal Procedure Code.

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The records have been examined under section 435, Criminal Procedure Code, and it is clear that the order of the Magistrate imposing fine on the accused when an order has been passed under section 562, Criminal Procedure Code, is illegal.

The proceedings are forwarded for revision on the following grounds:—

The order of the Magistrate in awarding a sentence by fine when an order under section 562, Criminal Procedure Code, had been passed is illegal. It is liable to be set aside. It is recommended that the order imposing fine be reversed.

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ORDER OF THE HIGH COURT.

HADI LAL C.J.

SIR SHADI LAL C. J.—The accused Karim Bakhsh has been convicted under section 454, Indian Penal Code, but on account of his youth he has been released on probation under section 562, Criminal Procedure Code. The trial Magistrate has, at the same time, imposed upon the convict a fine of Rs. 25; but in view of the wording of section 562, Criminal Procedure Code, this sentence of fine is illegal. Accordingly I set aside the order inflicting the fine. The fine, if realised, shall be refunded to the accused.

*N. F. E.*

*Revision accepted.*

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