

REVISIONAL CRIMINAL.

Before Coldstream J.

MUHAMMAD HUSSAIN—Petitioner

versus

THE CROWN—Respondent.

Criminal Revision No. 1271 of 1930.

1930

Dec. 11.

Criminal Procedure Code, Act V of 1898, section 423—Sentence—Alteration of—by Appellate Court—whether an enhancement—test of.

The petitioner was sentenced by a Magistrate to a year's rigorous imprisonment and Rs. 50 fine, or six months' further imprisonment in default. On appeal the Sessions Judge altered the sentence to one of six months' rigorous imprisonment and Rs. 500 fine, or six months' further rigorous imprisonment in default. The question was whether the alteration was an enhancement of the sentence and was, therefore, illegal.

Held, that the alteration was not an enhancement, because when the aggregate period of imprisonment which the accused may have to undergo is to any extent less than the period of the original sentence, the fact that a fine is imposed by the Appellate Court would not in law be an enhancement of the sentence.

Bhakthavatsalu Naidu v. Emperor (1), *Queen-Empress v. Chagan Jagannath* (2) and *Bhola Singh v. King-Emperor* (3) relied upon.

King-Emperor v. Sagwa (4), distinguished.

Application for revision of the order of Rai Sahib Lala Shibbu Mal, Sessions Judge, Gurdaspur, dated the 28th August 1930, modifying that of Chaudhri Kharak Singh, Honorary Magistrate, 1st Class, Gurdaspur, dated the 30th July 1930, convicting the petitioner.

(1) (1907) I. L. R. 30 Mad. 103 (F.B.). (3) (1924) I. L. R. 3 Pat. 638.

(2) (1899) I. L. R. 23 Bom. 439.

(4) (1901) I. L. R. 23 All. 497.

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CHUNI LAL, for Petitioner.

CHIRANJIVA LAL, for Complainant.

PARTAP SINGH, for Government Advocate, for Respondent.

COLDSTREAM J. COLDSTREAM J. - This revision petition has been admitted solely on the question of the legality of the sentence.

The petitioner was sentenced by an Honorary Magistrate to a year's rigorous imprisonment and Rs. 50 fine or six months' further imprisonment in default under section 420 of the Indian Penal Code, for having cheated another goldsmith out of 20 *tolas* of gold. On appeal the Sessions Judge altered the sentence to one of six months' rigorous imprisonment and Rs. 500 fine or six months' further rigorous imprisonment in default. It is contended by Mr. Chuni Lal for the petitioner that this alteration is an enhancement of the sentence and is illegal. Mr. Chuni Lal relies on *King-Emperor v. Sagwa* (1) and *Bhola Singh v. King-Emperor* (2). In both these cases the period of imprisonment imposed by the appellate Court, together with the imprisonment to be undergone in default of payment of fine, was not less than the period of imprisonment which the convict would have had to serve under the sentence imposed by the lower Court. In the first case the trial Court had passed a sentence of six months' rigorous imprisonment—upon appeal this sentence was altered to one of four months' rigorous imprisonment and a fine of Rs. 100, or in default two months' rigorous imprisonment. The High Court held that this alteration amounted to an enhancement of the sentence. In the second case the original

(1) (1901) I. L. R. 23 A) 497. (2) (1924) I. L. R. 3 Pat. 638.

sentence was two months' rigorous imprisonment and a fine of Rs. 50, and in default of payment one month's rigorous imprisonment. On appeal the District Magistrate had changed the sentence to one of one month's rigorous imprisonment and a fine of Rs. 200, or in default two months' rigorous imprisonment.

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The question what alteration of sentence in such cases will amount to enhancement was dealt with by a Full Bench of the Madras High Court in *Bhakthavatsalu Naidu v. Emperor* (1). The opinion of the Court was that when the aggregate period of imprisonment which the accused may have to undergo is to any extent less than the period of the original sentence the fact that a fine is imposed by the appellate Court would not in law be an enhancement of the sentence. A case decided by a Division Bench of the Bombay Court is to be found in *Queen-Empress v. Chagan Jagannath* (2). There the appellate Court had altered a sentence of nine months' rigorous imprisonment to a sentence of six months' rigorous imprisonment and a fine of Rs. 1,000 and in default of payment three months' rigorous imprisonment. The High Court held that there had been no enhancement of sentence as the sentence of three months' rigorous imprisonment in default of payment did not make the whole sentence of imprisonment longer than it was before.

The Patna case cited by the petitioner's counsel is really authority against him, for in that case the Court's decision was that the sentence of the appellate Court would be regularised by reducing the sentence of imprisonment in default of payment of the fine of Rs. 200 to rigorous imprisonment for one month and proceeded to alter the original sentence in the same

(1) (1907) I. L. R. 30 Mad. 103 (F.B.). (2) (1899) I. L. R. 23 Bom. 439.

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manner as the appellate Court has done in this case, that is to say, by increasing the fine substantially and reducing the aggregate period of imprisonment to less than the aggregate period imposed by the trial Court.

Following the authority of the last three rulings cited I hold that the Sessions Judge has not enhanced the sentence, which is legal.

The petition must accordingly be dismissed.

A. N. C.

Petition dismissed.

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APPELLATE CIVIL.

Before Shadi Lal C.J. and Agha Haidar J.

NIKKU MAL-SARDARI MAL (DEFENDANTS)

Appellants

versus

GUR PARSHAD AND BROTHERS (PLAINTIFFS)

Respondents.

Civil Appeal No. 929 of 1926.

Indian Contract Act, IX of 1872, section 107—Contract of sale of goods—breach by buyer—seller's right of re-sale—Delay in selling—Measure of damages.

Held, that it is a well-settled rule that on breach by the buyer of a contract for the purchase of goods, if the vendor chooses to enforce his right to re-sell, he must do so within a reasonable time from the date of the breach. If the goods are re-sold within a reasonable time after the breach of the contract by the purchaser, the measure of damages is the difference between the contract price and the price realised on the re-sale, with the costs and expenses of the re-sale. But if the re-sale has been unreasonably delayed until the market has fallen, the price realised on re-sale will not afford a true criterion of the damages, and the measure of damages will then be the difference between the