

REVISIONAL CRIMINAL.

Before Jai Lal J.

MUSSAMMAT SABHAI (CONVICT) Petitioner

versus

THE CROWN—Respondent.

1932

Jan. 29.

Criminal Revision No. 1189 of 1931.

Frontier Crimes Regulation, III of 1901, sections 48, 49, 59: whether appellate and revisional jurisdiction of High Court affected—section 30: Adultery by married woman—onus probandi.

Held, that sections 48 and 49 of the Frontier Crimes Regulation, III of 1901, do not affect the appellate and revisional jurisdiction of the High Court at Lahore with regard to proceedings pending before or cases decided by, ordinary criminal Courts, even when they relate to offences specially constituted by the regulation.

And, therefore, the case having been decided by the Magistrate under the provisions of section 59 of the Regulation, the appellate jurisdiction of the Sessions Judge and the revisional jurisdiction of the High Court is not affected.

Petition under section 439, Criminal Procedure Code, for revision of the order of Mr. C. N. T. Henry, Sessions Judge, Multan, dated the 24th July, 1931, affirming that of Sardar Balwant Singh, Garewal, Magistrate, 1st class, Leiah, dated the 18th May, 1931, convicting the petitioner.

S. R. LAUL, for Petitioner.

KHURSHAID ZAMAN, for Government Advocate,
for Respondent.

JAI LAL J.—This petition for revision raises an important question of jurisdiction. The petitioner *Mussammatt Sabhai* has been convicted under section 30 of the Frontier Crimes Regulation, III of 1901, and has been sentenced to two years' rigorous im-

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prisonment. Section 30 of the Regulation has enacted a substantive offence and provides that a married woman who knowingly and by her consent has sexual intercourse with any man who is not her husband is to be deemed to be guilty of the offence of adultery punishable with imprisonment which may extend to five years. The petitioner was tried and convicted by *Sardar Balwant Singh, Garewal*, Magistrate, 1st Class, Leiah, in the district of Muzaffargarh, and her appeal was dismissed by the Sessions Judge of Multan on its merits.

As I was doubtful whether there was sufficient evidence in support of the conviction I issued notice to the Crown, consequently at the hearing of the petition the Crown was represented by Mr. Khurshaid Zaman, Advocate, who raised a preliminary objection that this Court is not competent to interfere on revision where a person has been convicted under any section of the Regulation concerned and, in support of this objection, he relied upon sections 48 and 49 of the Regulation, the former of which provides that "no appeal shall lie from any decision given, decree or sentence passed, order made, or act done, under any of the provisions of this Regulation," and the latter authorises the Commissioner to call for the record of any proceeding under the Regulation and revise any decision, decree, sentence or order given, passed or made therein. It appears to me, however, that these two sections merely relate to orders passed by the Deputy Commissioner" or the "Commissioner" in exercise of powers expressly conferred on them by the Regulation and which mainly have the effect of ousting the jurisdiction (original and appellate) of the ordinary Courts. So-

far as the appellate and revisional jurisdiction of this Court with regard to proceedings pending before or cases decided by the Magistrates or Sessions Judges is concerned it is not affected by these sections.

Section 59 of the Regulation expressly provides that an offence punishable under section 29 or section 30 of the Regulation may be tried by a Court of Sessions or by the Court of a Magistrate of the first class and that the offence punishable under section 37 may be tried by any Magistrate of the first class. It seems to me that the present case was decided by the Magistrate, 1st Class, under the provisions of section 59 and, therefore, the appellate jurisdiction of the Sessions Judge and the revisional jurisdiction of this Court is not affected.

The Regulation mentioned above has the effect of constituting special tribunals for the trial of specified offences, of providing special procedure for dealing with certain acts which affect public tranquility and, lastly, of constituting new offences. It further confers power on the Deputy Commissioner to withdraw proceedings from the ordinary Courts and to commit them for trial to specially constituted tribunals and to dispose of them himself and also to pass certain orders himself without reference to such tribunals. But persons who offend against the ordinary criminal law or against the newly constituted offences are amenable either to the jurisdiction of the ordinary criminal Courts or, at the discretion of the Deputy Commissioner, to the jurisdiction of the specially constituted tribunals. When, however, jurisdiction is exercised by ordinary criminal Courts even with regard to the specially constituted offences, the exercise of such jurisdiction by them is subject to the appel-

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late and revisional jurisdiction of the superior Courts. The application of the provisions of sections 48 and 49 is, therefore, only to orders passed by the Deputy Commissioner and the Commissioner acting under the express provisions of the Regulation. I am, therefore, of opinion that this Court has jurisdiction to revise the order of the Sessions Judge and the Magistrate in the case on its merits. If, however, I had held that the objection raised on behalf of the Crown is sound still I would have had jurisdiction to set aside the order of the Sessions Judge owing to its being without jurisdiction, thus leaving the convict to invoke the revisional jurisdiction of the Commissioner.

[*The rest of the judgment is not necessary for reporting—Ed.*]

N. F. E.

Revision accepted.