

REVISIONAL CRIMINAL.*Before Din Mohammad J.*

THE CROWN—Petitioner

versus

NAWAB—Respondent.

Criminal Revision No. 593 of 1936.

Criminal Procedure Code, Act V of 1898 (as amended by Act XVIII of 1923), section 239 (e) — Joint trial — of person accused of an offence under section 457, Indian Penal Code, with person accused of receiving or retaining the stolen property — legality of trial.

Held, that a person accused of an offence under section 457, Indian Penal Code, can by virtue of section 239 (e), Criminal Procedure Code (as amended in 1923), be legally charged and tried with persons accused of receiving or retaining the stolen property.

Jagga v. King-Emperor (1), and Sultan Ahmad v. Emperor (2), distinguished.

Petition for revision of the order of Mr. Nawab Singh, Sessions Judge, Sialkot, dated 26th January, 1936, reversing that of Chaudhri Jai Narain Singh, Magistrate, 1st Class, Sialkot, dated 23rd December, 1935, and ordering re-trial of the accused.

JHANDA SINGH, for Government Advocate, for Petitioner.

ROOP CHAND, for Respondent.

DIN
MOHAMMAD J.

DIN MOHAMMAD J.—This order will dispose of Criminal Revisions Nos. 593 and 594 of 1936. These petitions have been presented to this Court by the Local Government against the order of the Sessions Judge directing a re-trial.

The facts bearing upon the point of law involved in this case are these. One Nawab was sent up along with one Khushia to stand his trial under section 457, Indian Penal Code, in two different cases. The trial

(1) 51 P. R. (Cr.) 1905.

(2) (1928) 112 I. C. 584.

Magistrate, however, in both cases framed a charge under section 457, Indian Penal Code, against Nawab while against Khushia a charge under section 411, Indian Penal Code, was framed. In both cases Nawab was convicted but Khushia was acquitted. Nawab appealed to the Sessions Judge who allowed his appeals, set aside his convictions and ordered a re-trial in both cases on the ground that a joint trial of a person charged under section 457, Indian Penal Code, with a person charged under section 411, Indian Penal Code, was illegal. In this connection he relied on *Jagga v. King-Emperor* (1) and *Sultan Ahmad v. Emperor* (2).

1936
 THE CROWN
 v.
 NAWAB.
 DIN
 MOHAMMAD J.

I have no hesitation in saying that the order of the Sessions Judge is wrong. Prior to 1923, when the Criminal Procedure Code was amended, the position was as stated by the Sessions Judge, but with the amendment of section 239, Criminal Procedure Code, the law was changed. The Sessions Judge has referred to clauses (d) and (f) of section 239, but neither of these is relevant to the point. This case is governed by clause (e) of section 239 which says that "persons accused of an offence which includes theft * * * * and persons accused of receiving or retaining * * * * property, possession of which is alleged to have been transferred by any such offence committed by the first named persons" * * * * may be charged and tried together. The Sessions Judge appears to have been influenced by the two judgments referred to above, but *Jagga v. King-Emperor* (1) was clearly out of date as the law had been amended since, and *Sultan Ahmad v. Emperor* (2) appears to have been misappreciated by the Sessions

(1) 51 P. R. (Cr.) 1905.

(2) (1928) 112 L. C. 584.

1936

THE CROWN

v.

NAWAB.

DIN

MOHAMMAD J.

Judge. The question in that case was whether offences described in sections 457 and 436 could be jointly tried with offences under sections 411 and 414, Indian Penal Code, with which different persons were charged. The learned Judge came to the conclusion that they could not be tried together but the *ratio decidendi* of his judgment was that section 436, Indian Penal Code, did not include theft or extortion, although section 457, Indian Penal Code, did. This distinction appears to have been overlooked by the Sessions Judge in this case. Section 457, Indian Penal Code, includes theft and a person accused of an offence under section 457 can by virtue of section 239 (e) be legally charged and tried with persons accused of receiving or retaining stolen property.

I, therefore, allow these petitions, set aside the order of the Sessions Judge and direct him to dispose of the two appeals of Nawab in accordance with law.

A. N. C.

Revision accepted.