

FULL BENCH.

Before Addison, Tek Chand and Ram Lall JJ.

RASUL KHAN—Petitioner,

versus

THE CROWN—Respondent.

Criminal Revision No. 1223 of 1938.

Criminal Procedure Code (Act V of 1898), S. 514 (1) — Security to keep the peace — Surety — conviction of person under security — for an offence involving breach of the peace — Proceedings to forfeit security bond taken not simultaneously with, but subsequent to, the order of conviction — Legality of.

Held, that the mere fact, that no immediate action under s. 514 has been taken against the person under recognizance to keep the peace or against the surety on the conviction of the former to keep the peace, is no bar to such proceedings being taken at a subsequent time, there being nothing in s. 514 (1) or in any other part of the Code of Criminal Procedure to warrant the inference that proceedings for the forfeiture of the bond should be taken simultaneously with the order convicting the accused person for having committed an offence involving a breach of the peace.

Crown v. Mawaz (1), In re Ram Chunder Lalla (2), In re Parbutti Churn Bose (3), Gul Khan v. The King Emperor (4), Hussain Khan v. The Crown (5), and Munshi v. Emperor (6), dissented from.

Emperor v. Raja Ram (7), Jeomal v. Emperor (8), and Miram Shah v. Emperor (9), relied upon.

Revision from the order of Mr. H. J. B. Taylor, District Magistrate, Attock at Campbellpur, dated 25th May, 1938, affirming that of Sheikh Alau-ud-Din Arshad, Additional District Magistrate, Campbellpur, dated 7th March, 1938, forfeiting the bond of the petitioner.

(1) 13 P. R. (Cr.) 1913 (F. B.).

(2) (1877) 1 Cal. L. R. 134.

(3) (1878) 3 Cal. L. R. 406.

(4) 26 P. R. (Cr.) 1904.

(5) 15 P. R. (Cr.) 1917.

(6) 1924 A. I. R. (Lah.) 680.

(7) I. L. R. (1904) 26 All. 202.

(8) (1926) 92 I. C. 742.

(9) (1936) 163 I. C. 443.

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v.
THE CROWN.

ABDUL AZIZ KHAN, for Petitioner.

MOHAMMAD MONIR, Assistant to the Advocate-General, for Respondent.

The order of Din Muhammad J., dated 19th October, 1938, referring the case to a Full Bench was as follows :—

DIN MOHAMMAD J.—On the 18th May, 1936, the petitioner Rasul Khan had stood surety for one Nur Mohammad under section 107, Criminal Procedure Code. On the 25th February, 1937, Nur Mohammad was convicted by the Additional District Magistrate of an offence under section 326, Indian Penal Code, alleged to have been committed by him on the 16th November, 1936. This naturally entailed the forfeiture of the bond. The Magistrate, however, took no action in this respect on the date when he convicted Nur Muhammad, but on the 26th February he appended a note to his judgment to the effect that proceedings for the forfeiture of the bond would be started after the result of the appeal, provided the prosecution moved in the matter. These proceedings were ultimately taken and on the 7th March, 1938, Rs.300 out of Rs.500 were forfeited. On appeal, it was contended before the District Magistrate that the order was illegal as no proceedings had been started at the time when the judgment was pronounced and in support of this contention reliance was placed, among other rulings, on *Crown v. Mawaz* (1). The District Magistrate, however, offered his own criticism of the judgment and did not choose to follow it.

Counsel for the Crown has maintained the same position before me and has urged that although *Crown v. Mawaz* (1) was followed in *Munshi v. Emperor* (2)

(1) 13 P. R. (Cr.) 1913 (F. B.).

(2) 1924 A. I. R. (Lah.) 680