

APPELLATE CRIMINAL.

Before Monroe and Din Mohammad JJ.

1938

June 21.

THE CROWN—Appellant,
versus
AMAR SINGH—Respondent.

Criminal Appeal No. 164 of 1938.

Criminal Procedure Code (Act V of 1898), SS. 10 (2), 337 (i) Proviso — Approver — Tender of pardon by Additional District Magistrate — Validity of — District Magistrate in S. 337 (1) whether includes Additional District Magistrate as invested with powers under S. 10 (2).

An approver to whom pardon had been tendered by Mr. S, the Additional District Magistrate, was tried and convicted for the offence of giving false evidence. He was acquitted by the Sessions Judge on the ground (*inter alia*) that the Additional District Magistrate was not empowered in law to tender a pardon to him and therefore the whole proceedings following thereupon were void. On the Crown appealing against his acquittal it was contended on his behalf that although Mr. S, was an Additional District Magistrate and as such had been empowered by the Local Government under s. 10 (2) of the Criminal Procedure Code to exercise all the powers of a District Magistrate, he could not be treated as a District Magistrate under s. 337 inasmuch as the words used in s. 337 were “the District Magistrate” and not “a District Magistrate” and therefore under the second part of the proviso, Mr. S, stood in need of the sanction of the District Magistrate for a valid tender of pardon and as no such sanction had been obtained, the pardon could not be legally recognised.

Held (repelling the contention) that the Additional District Magistrate was not in any way affected by the proviso to section 337 (1) and that he was in his own right empowered under the law to tender a pardon to the accused because when the Legislature used the words “the District Magistrate” in s. 337 (1) it did not intend to exclude an Additional District Magistrate upon whom the ordinary powers of a District Magistrate had been conferred under sub-section (2) of s. 10.

Faqir Singh v. Crown (1), dissented from.

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Appeal from the order of Mr. T. D. Bedi, Additional Sessions Judge, Lyallpur, dated 13th November, 1937, reversing that of Mr. R. D. Budhwar, Magistrate, 1st Class, Lyallpur, dated 31st July, 1937, and acquitting the respondent.

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

CHAMAN LAL, for Respondent.

The judgment of the Court was delivered by—

DIN MOHAMMAD J.—This is an appeal from the order of the Additional Sessions Judge, Lyallpur, acquitting Amar Singh who had been convicted by a Magistrate, 1st Class, of an offence under section 193, Indian Penal Code, and sentenced to four years' rigorous imprisonment.

The Additional Sessions Judge has based his decision on the following conclusions:—

(1) that *Lala Sant Ram*, Additional District Magistrate, was not empowered in law to tender a pardon to Amar Singh and consequently the whole proceedings following thereupon were void;

(2) that no reasons having been recorded by the Additional District Magistrate as required by section 337 (1-A) of the Criminal Procedure Code, the tender of pardon was bad in the eye of the law;

(3) that there was no evidence to show that Amar Singh had ever accepted the pardon;

(4) that the statement of Amar Singh made before Mr. Allah Dad Khan, Magistrate, was not recorded in a free atmosphere; and

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(5) that the statement made before Mr. Allah Dad Khan, Magistrate, had been made under pressure from the police.

After hearing the Assistant Advocate-General for the Crown and Mr. Chaman Lal for Amar Singh, we have come to the conclusion that not one of the reasons recorded by the Sessions Judge for the acquittal of Amar Singh is sound in law.

We will take the points mentioned above *seriatim*.

(1) Section 337 (1) lays down that in the case of any offence triable exclusively by the High Court or Court of Session, *the* District Magistrate, a Presidency Magistrate, a Sub-Divisional Magistrate or any Magistrate of the first class may, at any stage of the investigation or enquiry into, or the trial of the offence, tender a pardon to such person on certain conditions. In the proviso attached to this subsection it is made clear that where the offence is under enquiry or trial, no Magistrate of the first class other than the District Magistrate shall exercise the power hereby conferred unless he is the Magistrate making the enquiry or holding the trial and, where the offence is under investigation, no such Magistrate shall exercise the said power unless he is a Magistrate having jurisdiction in a place where the offence might be enquired into or tried and the sanction of the District Magistrate has been obtained to the exercise thereof. The contention raised on behalf of Amar Singh which found favour with the Sessions Judge was that although *Lala Sant Ram* was an Additional District Magistrate and as such had been empowered by the Local Government under section 10 (2) of the Criminal Procedure Code, to exercise all the powers of a District Magistrate under the Code, he could not

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be treated as a ' District Magistrate ' under section 337 inasmuch as the words used in section 337 are " the District Magistrate " and not " a District Magistrate." It was consequently urged on his behalf that under the second part of the proviso *Lala Sant Ram* stood in need of the sanction of the District Magistrate for a valid tender of pardon and that as no sanction of the District Magistrate had been obtained by him to the pardon tendered to Amar Singh, the pardon could not be legally recognised. This, in our view, is an erroneous way of interpreting these provisions of law. We find, however, that in this matter the Sessions Judge is supported by an authority of this Court reported as *Faqir Singh v. Crown* (1). The matter before the Division Bench in that case had nothing to do with the interpretation of section 337 but in the course of his judgment Bhide J. made the following observations :—

" It would appear from the proviso to section 337, Criminal Procedure Code, that when pardon is to be tendered during the course of an enquiry or trial, it must be tendered by ' the District Magistrate.' There is only one District Magistrate for a district (*vide* section 10, Criminal Procedure Code), and although the Additional District Magistrate may have the powers of a District Magistrate he cannot be called ' the District Magistrate '."

Coldstream J. agreed with the judgment of Bhide J. Apart from the fact that this is an *obiter dictum*, we may say with all respect that we have not been able to realise on what ground the distinction between ' the District Magistrate ' and ' a District Magistrate ' is based. It is true that section 10 (1)

(1) I. L. R. (1935) 16 Lah. 594.

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lays down that in every district outside the Presidency towns the Local Government shall appoint a Magistrate of the first class, who shall be called *the* District Magistrate, and in sub-section (2) it is provided that the Local Government may appoint any Magistrate of the first class to be an Additional District Magistrate and such Additional District Magistrate shall have all or any of the powers of a District Magistrate, under this Code as the Local Government may direct. But that does not mean that the District Magistrate referred to in sub-section (1) is a different functionary from the District Magistrate referred to in sub-section (2). In Part V of Schedule III to the Criminal Procedure Code, the ordinary powers of a District Magistrate have been specified and these powers include 'power to tender pardon to an accomplice at any stage of a case' under section 337. Consequently sub-section (2) of section 10 refers to the powers of a District Magistrate evidently using the term in a general sense, and the mere fact that in sub-section (1), the article "the" has been used before the words "District Magistrate" does not, in our view, alter the situation in any manner. Similarly, when the Legislature used the words "the District Magistrate" in section 337 (1), it did not intend to exclude an Additional District Magistrate upon whom the ordinary powers of a District Magistrate had been conferred under sub-section (2) of section 10. We cannot believe that by the use of the definite article before 'District Magistrate' in section 337, the Legislature intended to specify the District Magistrate appointed as such and not the Additional District Magistrate empowered as such. If this were so, the whole object of conferring ordinary powers of a District Magistrate including power to tender pardon is

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clearly defeated. There is no meaning in conferring on a person a power which cannot be exercised by that person. The Sessions Judge has referred to sub-section (3) of section 10 in support of his conclusion, but we are unable to see how that sub-section offers any help in that matter. It merely says that for the purposes of sections 192, sub-section (1), 407, sub-section (2) and 528, sub-sections (2) and (3), such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate, and inasmuch as those provisions of law deal with special matters relating to transfer or withdrawal of cases or appeals it is not clear how the subordination of the Additional District Magistrate to the District Magistrate mentioned in connection therewith deprives the Additional District Magistrate of the exercise of powers otherwise conferred upon him under section 10 (2). To us this matter appears to be so obvious that it requires no further discussion and if once it is held that the Additional District Magistrate could act as the District Magistrate under section 337, the argument employed by the Sessions Judge and repeated before us by counsel for Amar Singh falls to the ground. We hold, therefore, that the Additional District Magistrate was not in any way affected by the proviso to section 337 (1) and that he was in his own right empowered under the law to tender a pardon to the accused.

(2) Coming now to the matter of recording reasons, we are surprised to find that the Sessions Judge has devoted a substantial part of his judgment to discussing whether the non-compliance with sub-section (1-A) of section 337 is an illegality or a mere irregularity and whether all the proceedings taken subsequent to the pardon thus tendered are vitiated

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on that account. Sub-section (1) of section 337 contemplates that a pardon is to be tendered "with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence" and in Exhibit P/G, which is the record of the pardon tendered to Amar Singh it is clearly stated that "in order to connect the accused with the offence of the murder of *Mussammatt* Jamna, w/o Tara Singh, caste Bhatra of Gobindpura, Police Station Sadar, Lyallpur, it is essential to make an approver in this case. I, therefore, tender pardon under section 337, Criminal Procedure Code, to Amar Singh, son of Pheru Singh,....." What clearer reason could be recorded for tendering a pardon to Amar Singh cannot be imagined and we really fail to understand why the Sessions Judge in the face of this document failed to realize that the only thing required by law to be done had been amply done.

(3) It was contended before the Sessions Judge that there was no proof on the record to show that Amar Singh had accepted the pardon tendered to him. The same argument has been reiterated before us, but, in our view, it has no force whatever. The very fact that Amar Singh appeared before the various Magistrates in the capacity of a witness, and not that of an accused person, is a clear indication of the fact that he had accepted the pardon tendered to him. So long as the pardon tendered is not accepted the person concerned is treated as an accused person in the case and it is only after it is accepted that he is removed from that category and treated as a witness. It is nowhere laid down in the Criminal Procedure Code that the acceptance should be in writing or that it should be expressed in any other manner; it is to be gathered from the circumstances, and there is no

doubt whatever from the circumstances brought on the record that the pardon tendered to Amar Singh had been accepted by him. The fact is deposed to by the Additional District Magistrate and his Reader and, apart from the circumstantial evidence referred to above, this direct evidence is enough to establish conclusively that the pardon had been accepted by Amar Singh.

(4) and (5). The remaining two points relied upon by the Sessions Judge, namely, (a) that the statement of Amar Singh made before Mr. Allah Dad Khan Magistrate, had not been recorded in a free atmosphere and (b) that it was the result of torture by the police are not very material in this case inasmuch as the charge against the accused was that he had altogether denied having made any statement before Mr. Allah Dad Khan and the factum of a statement having been made by a person is quite a different matter from what its legal effect may be on account of the circumstances in which it was made. If it were necessary, however, to record a finding on this aspect of the case, we have no hesitation in holding that no pressure was brought to bear upon Amar Singh to make the statement that he made before Mr. Allah Dad Khan and that the circumstances in which that statement was recorded do not support the conclusion that the statement was not voluntary or that it was being made at the time when Amar Singh was under any pressure from the police.

A new point was raised before us by Mr. Chaman Lal, counsel for Amar Singh, that inasmuch as subsection (2) of section 337 contemplates that every person accepting a tender shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any,

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no other Magistrate is empowered to record the statement of a person to whom pardon has been tendered. This matter is concluded by authority and need not be discussed any further [see *The Crown v. Parma Nand* (1)].

Counsel for the accused finally urged that the case of Amar Singh is not covered by Part I of section 193, Indian Penal Code, but falls under Part II of that section. This again is immaterial as it only affects the question of the sentence, and not of the conviction of the accused.

It only remains to consider now whether the charge of perjury has been brought home to the accused and on that matter we are not in any doubt whatever. *Lala Sant Ram* and his Reader have deposed to the effect that Amar Singh was tendered a pardon which he accepted. Mr. Allah Dad Khan has stated that of his own free will and accord Amar Singh made a statement before him after he had accepted the tender of pardon and it is not disputed that his statement recorded by the Committing Magistrate on the 3rd September, 1936, is in direct opposition to what he had made before Allah Dad Khan. Amar Singh's statement to the effect that no pardon had been tendered to him and that he had accepted none and that he had made no statement before Mr. Allah Dad Khan, Magistrate, clearly brings his case within the purview of section 193 even if his statement before Mr. Allah Dad Khan and the contradictions introduced by him later in the statement before the Committing Magistrate are ignored altogether.

Holding, therefore, that the accused has committed an offence under section 193, Indian Penal

Code, we set aside the order of the Sessions Judge, acquitting Amar Singh, and sentence him to eighteen months' rigorous imprisonment from to-day.

A. N. K.

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Appeal accepted.

CIVIL REFERENCE.

Before Addison Acting C. J. and Din Mohammad J.

MUBARAK ALI—Petitioner,

versus

THE COMMISSIONER OF INCOME-TAX,
LAHORE—Respondent.

1938
June 27.

Civil Reference No. 7 of 1938.

*Indian Income-tax Act (XI of 1922), SS. 23 (4), 34 —
Income escaping assessment — assessment on the estimate
arrived at by Income-tax Officer — His best judgment —
Material before him — what is.*

The assessee in his return for 1934-35 showed his sales at Rs.12,000 odd. The Income-tax Officer did not challenge the figures, but enhanced the rate of profit. The assessee's appeal from that order failed. In the subsequent year's assessment the Income-tax Officer was of opinion that the assessee's accounts were not reliable and it came to light that he had invested large sums on immovable property in the previous years and those investments could not be explained in the face of the returns submitted by him since the years 1931-32. The Income-tax Officer accordingly issued a notice to the assessee under s. 34 for the year 1934-35 and eventually raised the figure of sales to Rs.40,000. It was contended on behalf of the assessee that the estimate arrived at by the Income-tax authorities was not based on any material or evidence.

Held, (repelling the contention) that it cannot be said that the estimate arrived at by the Income-tax Officer was not based on any material inasmuch as he took into consideration not only recent acquisitions, but also the fact that Income-tax