

I find no reason for interfering with the amount of damages awarded. Again, I have the power to interfere only, if a question of law is involved. The evidence of the amount of damage is sufficient to support the findings.

I dismiss the appeal with costs.

A. N. K.

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Appeal dismissed.

REVISIONAL CRIMINAL.

Before Tek Chand and Blacker JJ.

THE CROWN—Petitioner,

versus

CHANAN SINGH—Respondent.

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 May 9.

Criminal Revision No 1638 of 1938.

Criminal Procedure Code (Act V of 1898), SS. 35 and 397 — Indian Penal Code (Act XLV of 1860), S. 64 — Sentence of imprisonment in default of payment of fine — whether can be concurrent with any other sentence of imprisonment to which the prisoner may have been sentenced — Separate trials.

Held, that any sentence of imprisonment in default of fine has to be in excess of, and not concurrent with, any other sentence of imprisonment to which the prisoner may have been sentenced.

And, therefore, the Sessions Judge had no power in the present case to make various sentences of imprisonment in default of payment of fine concurrent with each other.

Imperator v. Akidullah (1), Emperor v. Subrao Sesharao (2) and Emperor v. Ghulam Ahmed (3), relied upon.

Case reported by Mr. S. A. Rahman, Sessions Judge, Ferozepore, with his No.1031-J. of 1938.

(1) (1912) 13 Cr. L. J. 536.

(2) (1926) 27 Cr. L. J. 111.

(3) 1929 A. I. R. (Sind.) 179 (1).

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

Nemo, for Respondent.

The facts of this case are as follows :—

Chanan Singh was tried under section 409, Indian Penal Code, in four different cases by Mr. Indra Nath, Magistrate, 1st Class, Fazilka. In each case, there were 3 counts of embezzlement against Chanan Singh, who was a civil bailiff employed specially for executing processes of the Mamdot Estate. The accused was found guilty on all the 3 counts in each of the four cases. The learned Magistrate awarded to him substantive terms of imprisonment of six months; 3 years' and one year's rigorous imprisonment on the 3 counts in the first case, respectively. In addition, he ordered him to pay fines of Rs.40, Rs.430 and Rs.100, respectively, with regard to these 3 counts and in default of payment of these fines, the accused was ordered to undergo two months', one year's and four months' rigorous imprisonment in addition to the substantive terms of imprisonment imposed on him. The substantive terms of imprisonment were ordered to run concurrently but the periods of imprisonment in default of payment of fines, were directed to run consecutively inter-se as well as to the substantive imprisonment. In the second case, the substantive terms of imprisonment awarded to Chanan Singh were one year and six months, six months' and two months', respectively, on the 3 counts. The fines imposed for the 3 counts were Rs.199, Rs.33 and Rs.7, respectively. In default of payment of these fines, 8 months', 2 months' and one month's rigorous imprisonment were awarded to the accused. In the 3rd case, similarly substantive terms of imprisonment awarded were one year, four months' and 1½ years'. The fines

imposed on the 3 counts were Rs.87, Rs.17 and Rs.164. In default of payment of these sums, further terms of imprisonment were awarded to him, *viz.*, 4 months, one month and 6 months, respectively. In the fourth case, the substantive terms of imprisonment imposed on Chanan Singh were six months, four months and six months on the 3 counts, respectively. The fines imposed were Rs.35, Rs.22-8-0 and Rs.48, respectively. In default of payment of the fines, the accused was to undergo two months', one month's and three months' rigorous imprisonment in addition, respectively. The learned Magistrate directed that the substantive terms of imprisonment would run concurrently in all the four cases but the sentences in lieu of fines were ordered to run consecutively. On appeal, I maintained the convictions of the accused in all the four cases. I considered, however, that the aggregate of the sentences imposed on the accused, including the substantive terms as well as the imprisonment to be undergone by him in lieu of fines, would become excessive. I found that the accused had been placed in an atmosphere of temptation due to the laxity of control by higher officials. I, therefore, ordered that the sentences awarded in lieu of the fines, though running consecutively to the substantive imprisonment awarded in any one case, would yet be concurrent with the sentences in lieu of fines imposed in all the cases. This would reduce the total term of imprisonment in lieu of fines to be undergone by the accused to 18 months only, the maximum amount awarded to him in any one case.

Reference is being made to the High Court on the following grounds:—

The learned Public Prosecutor on behalf of the Crown has now moved this Court for a reference to be

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made to the High Court. He contends that the sentences imposed in lieu of fines could not be ordered to run concurrently in all the four cases. In support of this argument, my attention has been drawn to section 64, Indian Penal Code, section 35 of the Criminal Procedure Code, and *Emperor v. Subrao Sesharao* (1). The last mentioned authority is a Bombay ruling of 1925. In that case, an accused person had been convicted under section 380, Indian Penal Code, in respect of two separate acts of theft and was sentenced to suffer rigorous imprisonment for one day and to pay a fine of Rs.50, or in default to suffer rigorous imprisonment for 3 months for each of the two offences. The Magistrate directed that the two sentences should run concurrently. The Superintendent of Jail raised the question whether the sentences of imprisonment in default of payment of the fines could run concurrently. The District Magistrate then referred the matter to the High Court. Their Lordships purported to follow the rulings reported as *Imperator v. Akidullah* (2), and held that section 35 of the Criminal Procedure Code, did not permit the passing of concurrent sentences of imprisonment in default of fines imposed for two or more offences. The *ratio decidendi* in that case was that in case of part payment of the fine, it would be difficult to estimate what portion of which term of imprisonment should terminate under section 69, Indian Penal Code. This case, however, apparently concerns the joint trial of an accused for two offences. The present case may, therefore, be distinguished on the facts from that case. Here there have been four separate trials of Chanan Singh, judgment in which

(1) (1926) 57 Cr. L. J. 111.

(2) (1912) 13 Cr. L. J. 536.

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was delivered on one and the same day. In any one case, I have directed that the sentences in lieu of fines would run consecutively to the substantive terms of imprisonment awarded. The only direction which I thought, was called for, was to direct that the sentences in lieu of fines in the four cases should be deemed to run concurrently from the same date. No clear authority on this point apparently exists and the position strikes me as somewhat doubtful. Section 35 of the Criminal Procedure Code, also explicitly mentions conviction at one trial for two or more offences. Section 64 of the Indian Penal Code, merely lays down that where a fine is imposed in addition to a substantive term of imprisonment, it would be competent to a Court to order that in default of payment of fine, the offender should suffer imprisonment for a certain term in excess of the other imprisonment. I think an authoritative pronouncement is necessary on this point, which does not appear to be covered by any explicit authority. If it may be found that my order would not be strictly justifiable according to the provisions of law, I would recommend that in order to regularize my direction, it may now be ordered that the sentences of imprisonment in lieu of fines in 3 of the cases may be deleted altogether or in the alternative, the fines themselves in those three cases may be remitted so that in case of default of payment of fines, the only term of imprisonment that Chanan Singh should undergo would be 18 months' rigorous imprisonment.

ORDER OF THE HIGH COURT.

The order of Abdul Rashid J., dated 27th January, 1939, referring the case to a Division Bench.

The question for determination in this criminal revision is, whether sentences of imprisonment in default of payment of fines awarded in separate trials

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can be made to run concurrently. No authority on the question involved in this case has been cited at the Bar. *Imperator v. Akidullah* (1) and *Emperor v. Subrao Sesharao* (2) deal with fines inflicted for various offences in the same trial and not with fines inflicted for different offences in separate trials.

The question is one of great importance, and I therefore, subject to the orders of the learned Chief Justice, refer it to a Division Bench for decision.

THE JUDGMENT OF DIVISION BENCH.

BLACKER J.

BLACKER J.—In this case Chanan Singh was convicted in four separate trials and on three charges in each trial, that is to say on 12 separate charges and he was punished as follows:—

| Trial. | Charge. | imprisonment: | Fine. | Imprisonment in default. |
|--------|----------|---------------|---------------------|--------------------------------|
| 1 | (i) .. | 6 months .. | Rs. A. P. 40 0 0 | 2 months. |
| | (ii) -- | 3 years .. | 430 0 0 | 1 year. |
| | (iii) .. | 1 year .. | 100 0 0 | 4 months. |
| 2 | (i) .. | 1½ years .. | 199 0 0 | 8 months. |
| | (ii) .. | 6 months -- | 33 0 0 | 2 months. |
| | (iii) -- | 2 months .. | 7 0 0 | 1 month. |
| 3 | (i) .. | 1 year .. | 87 0 0 | 4 months. |
| | (ii) .. | 4 months .. | 17 0 0 | 1 month. |
| | (iii) .. | 1½ years .. | 164 0 0 | 6 months. |
| 4 | (i) .. | 6 months .. | 35 0 0 | 2 months. |
| | (ii) .. | 4 months .. | 22 8 0 | 1 month. |
| | (iii) -- | 6 months .. | 48 0 0 | 3 months. |

(1) (1912) 13 Cr. L. J. 536.

(2) (1926) 27 Cr. L. J. 111.

The learned Magistrate directed that all the substantive sentences of imprisonment should be concurrent, but left the sentences of imprisonment in default of payment of fine to be consecutive. The net result of this would be that the prisoner would have to serve three years' substantively and 46 months' in all in default of payment of fine. The learned Sessions Judge dismissed his appeals, but ordered the sentences of imprisonment in default of payment of fine to be concurrent with each other in all the cases as he thought that the aggregate of the terms of imprisonment in default of payment of fine was excessive. Objection was taken to this on behalf of the Crown by the learned Public Prosecutor who relied upon three judgments reported as *Imperator v. Akidullah* (1), *Emperor v. Subrao Sesharao* (2) and *Emperor v. Ghulam Ahmed* (3). In all these judgments it was held that it was illegal to make sentences of imprisonment in default of payment of fine concurrent with each other or with a substantive term of imprisonment.

The learned Assistant to the Advocate-General appearing before us has contested this position, and has argued that there is nothing in the language of section 397, Criminal Procedure Code, or of section 35 of the same Code to contradict the view that a sentence of imprisonment in default of fine is a sentence of imprisonment within the meaning of those sections. This argument might have some force, were it not for the existence of section 64 of the Indian Penal Code, in which it is clearly laid down that any sentence of imprisonment in default of fine has to be *in excess* of any other sentence of imprisonment to which the

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prisoner may have been sentenced. Learned counsel attempted to argue that this should be read as referring to one particular offence only. But the language of the second paragraph of the section puts this view out of Court. Even in a case where there has only been a fine, the section directs that the imprisonment in default of that fine shall be in excess of any other imprisonment to which the offender may have been sentenced. These words necessarily imply that different convictions are contemplated. I, therefore, find myself constrained to follow the view held in the three rulings to which reference has been made above and to hold that the learned Sessions Judge had no power in law to make the various sentences of imprisonment in default of payment of fine concurrent with each other. That being so I would meet the case by accepting his alternative recommendation, namely, that the fines and with them the sentences of imprisonment in default be remitted altogether in the last three cases, and that they only stand in the first case in which Chanan Singh was fined Rs.40, Rs.430 and Rs.100 and ordered to undergo two months', one year's and 4 months' rigorous imprisonment in default. These three terms will of course have to be consecutive making a total of 18 months' rigorous imprisonment which Chanan Singh will have to serve in default of payment of fine.

TEK CHAND J.—I agree.

A. K. C.

Alternative recommendation accepted.
