

1925.

Magistrate's order in the last paragraph so as to read as follows :—

SHIVLING-  
APPA  
E.  
GURLINGAYA.

"The Potgi is chargeable on the joint family estate and Shivalingappa being the manager it should be recovered by attachment and sale of the moveable joint property in his possession, namely, Saris that were attached.

*Application dismissed.*

R. R.

### CRIMINAL REVISION.

*Before Mr. Justice Fawcett and Mr. Justice Madgarhar.*

EMPEROR v. PIRU RAMA HAVALDAR<sup>2</sup>.

1925.

August 11.,

*Criminal Procedure Code (Act V of 1898), section 35—Separate sentences—  
Indian Penal Code (Act XLV of 1860), sections 148, 326.*

The amendment in 1923 of section 35 of the Criminal Procedure Code restores the previous view of the law, as indicated in *Queen-Empress v. Bana Punja* (1), that separate sentences for offences punishable under sections 148 and 326 of the Indian Penal Code, are legal, subject to the provisions of section 71 of the Indian Penal Code, which prevent the offender being punished with a more severe punishment than the Court could have awarded for any one of the offences coming within the scope of that section.

*Queen-Empress v. Malu* (2), referred to.

THIS was an application for revision against convictions and sentences passed by K. G. Kulkarni, Assistant Judge of Satara, confirmed on appeal by K. W. Barlee, Sessions Judge of Satara.

Accused Nos. 1 to 4 were tried by the Assistant Sessions Judge of Satara for offences punishable under sections 148 and 362 of the Indian Penal Code. Accused Nos. 1 and 4 were each sentenced to suffer rigorous imprisonment for two years under section 148. They were acquitted of the charge under section 326. Accused No. 2 was sentenced to rigorous imprisonment for one year under section 148 and to three years under section 326. Accused No. 4 was also convicted of both the offences, and was ordered to suffer rigorous imprisonment for one year under section 148 and rigorous imprisonment for two years under section 326.

<sup>1</sup> Criminal Application for Revision No. 143 of 1925.

(1) (1892) 17 Bom. 260.

(2) (1899) 23 Bom. 706.

On appeal, the Sessions Judge acquitted accused No. 1; but confirmed the convictions and sentences passed on the remaining accused.

The accused applied to the High Court.

*Y. V. Bhandarkar*, for the accused.

*S. S. Patkar*, Government Pleader, for the Crown.

FAWCETT, J.:—In this case the petitioners have been convicted of offences under sections 148 and 326, Indian Penal Code, by the Assistant Sessions Judge of Satara. Appeals to the Sessions Judge were dismissed.

It is contended that we should go into the facts contrary to the usual practice of this Court in revision, but no adequate grounds appear for our following this exceptional course. The mere fact that there was some delay in the prosecution of the accused and that the investigating police apparently formed a conclusion contrary to the truth of the prosecution case are not sufficient to lead us to suppose that there has been any miscarriage of justice. Both the Assistant Sessions Judge and the Sessions Judge have written careful judgments, considering all the evidence including these opinions of the police officers, and the Sessions Judge acquitted one of the four accused who had been convicted by the Assistant Sessions Judge. In my opinion there is certainly no reason why we should apprehend that there has been any miscarriage of justice and consider the facts for ourselves.

The only legal point that has been raised is that there has been an error of law in passing separate sentences, (1) for an offence under section 148 and (2) for an offence under section 326 in the case of accused Nos. 2 and 3. They have been sentenced to one year's rigorous imprisonment each under section 148, Indian Penal Code, and to three and two years' rigorous imprisonment respectively under section 326, the sentences to

1925.

---

 EMPEROR  
 v.  
 PIRU RAMA.

1925.

EMPEROR  
v.  
PIRU RAMA.

run consecutively. It was ruled by this Court in *Queen-Empress v. Bana Punja* <sup>(1)</sup> that such separate sentences were quite legal. The subsequent Full Bench case of *Queen-Empress v. Malu* <sup>(2)</sup> no doubt over-rules this previous decision. But even under that ruling the passing of two separate sentences was held to be a mere irregularity, provided the aggregate of these does not exceed the punishment provided by law for any one of the offences, or the jurisdiction of the Court sentencing the offender. Section 35 of the Criminal Procedure Code has, however, now been amended, so as to restore the previous view of the law that such separate sentences are quite legal. For the word "distinct" in sub-section (1) of section 35, and the explanation to section 35, have been repealed; and the only qualification is that the separate sentences are subject to the provisions of section 71, Indian Penal Code. This prevents the offender from being punished with a more severe punishment than the Court could inflict, or could have awarded, for any one of offences coming within the scope of that section. But that provision is not brought in the present case. Our attention was called to the ruling of the Calcutta High Court in *Keamuddi Karikar v. Emperor* <sup>(3)</sup> but this appears to have been decided prior to the present alteration of section 35 by Act XVIII of 1923; and in any case we are bound to follow the rulings of this Court in preference to those of the Calcutta High Court. The sentences do not seem excessive, having regard to the offences held proved against the petitioners. I would, therefore, dismiss the application.

MADGAVKAR, J. :—I agree.

*Application dismissed.*

R. R.

(1) (1892) 17 Bom. 260.

(2) (1899) 23 Bom. 706.

(3) (1923) 51 Cal. 79.