As regards the other points which have been raised in the case I have nothing to add to what has been said by His Lordship the Chief Justice. I agree, therefore, that the convictions in these two cases must be set aside, and the fines, if paid, refunded.

*Convictions set aside.*

B. G. R.

## APPELLATE CRIMINAL.

*Before the Honourable Mr. J. W. F. Beaumont, Chief Justice, and Mr. Justice Murphy.*

EMPEROR *v.* GANESH WAMAN JOSHI.*

1930 November 17.

*Indian Penal Code (Act XLV of 1860), section 117—Abetment—Bombay Salt Act (Bom. Act II of 1890), section 47—Offence under section 117 of Indian Penal Code different from offence under section 9 of Indian Salt Act—Revisional application by third party—Jurisdiction.*

The offence under section 117 of the Indian Penal Code is an offence of abetment by the public generally or by persons more than ten in number and is a different offence to the offence of abetment under section 9 of the Indian Salt Act, 1882, which may be an offence of abetment by a single individual. On the necessary facts being proved an accused can therefore be sentenced under section 47 of the Bombay Salt Act, 1890, as well as under section 117 of the Indian Penal Code.

*Oudh Bar Association, Lucknow, In re: King-Emperor* v. *Mohanlal Saksena*,[1] not approved.

Though the High Court has jurisdiction to entertain applications for revision, where no right of appeal is exercised under section 439 (5) of the Criminal Procedure Code, the High Court will not interfere at the instance of a third party unless a very strong case is made out.

CRIMINAL Revisional Application No. 419 of 1930 by Bhargav Vishnu Kane on behalf of the Bar Association of Pandharpur in the case of *Imperator* v. *Ganesh Waman Joshi* who was convicted by the Additional District Magistrate, Sholapur, under section 47 of the Indian Salt Act, 1890, with section 117 of the Indian Penal Code.

The facts are set out in the judgment.

*Criminal Application for Revision No. 419 of 1930.

[1] (1930) 7 O. W. N. 895.

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*S. Y. Abhyankar*, for the applicant, Mr. Bhargav Vishnu Kane, on behalf of the Bar Association, Pandharpur.

BEAUMONT, C. J. :—This is an application in revision which is made by Mr. Kane, Pleader, on behalf of the Bar Association, Pandharpur. It appears that the accused, who is a pleader of Pandharpur, was convicted by the Additional District Magistrate, Sholapur, under section 47 of the Bombay Salt Act, 1890, with section 117 of the Indian Penal Code, and sentenced to suffer rigorous imprisonment for two years and a fine of Rs. 300 and to suffer rigorous imprisonment for six months under section 47 of the Bombay Salt Act, 1890. The accused has not seen fit to appeal, and section 439 (*5*) of the Code of Criminal Procedure provides that where an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed, so that, if this application was made by the accused himself it would not lie.

No doubt, this Court has jurisdiction to entertain applications in revision, where no right of appeal has been exercised, where the application is made by a third party, but entertaining such an application seems to me somewhat in breach of the spirit of section 439 (*5*), and third parties ought not to apply in revision unless there is a very strong case. I think the Bar Association in this case have applied because of a decision of the Oudh Chief Court in *Oudh Bar Association, Lucknow, In re: King-Emperor* v. *Mohan Lal Saksena*.[1] That, of course, is not an authorised report, nor is the decision binding upon us. The effect of the decision seems to be that an accused cannot be convicted under section 117 of the Indian Penal Code if he is charged under section 9

[1] (1930) 7 O. W. N. 895.

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Beaumont C. J.

of the Indian Salt Act, 1882, because that section prescribes a punishment for abetment. In point of fact this case does not come under section 9 of the Indian Salt Act, it comes under section 47 of the Bombay Salt Act. But, even apart from that difficulty, it seems to me, with respect to the learned Judges who decided that Oudh case, that they have failed to observe that the offence under section 117 of the Indian Penal Code is not the offence of abetment simply, but abetment by the public generally or by any number or class of persons exceeding ten, and the abetment referred to in section 9 of the Indian Salt Act of 1882 is simply abetment within the meaning of the Indian Penal Code, which may be abetment by a single person. It seems to me that the offence under section 117 of the Indian Penal Code is a different offence to the offence under section 9 of the Indian Salt Act.

It was perfectly legitimate for the legislature to take the view that abetment of an offence by the public generally, or by a large number of persons is a more serious matter than the abetment of an offence by a particular individual, and to empower the imposition of a heavier sentence in respect of the former offence.

In my opinion, there is no ground here for interfering with the decision of the Magistrate. I think it was legal. Therefore, the application must be refused.

MURPHY, J. :—I agree. Mr. Abhyankar's argument is that since section 9 of the Indian Salt Act, punishes an abetment of an offence under that Act, consequently by section 5 of the Indian Penal Code abetment of an offence under the Salt Act can only be punished under that section, and not under section 117 of the Indian Penal Code and section 47 of the Bombay Salt Act, these being the sections under which the conviction in question was had. I think that the provisions of the Indian

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*Murphy J.*

Salt Act really have no application to the facts of the present case. The conviction is under section 47 of the local Act and as pointed out by the learned Chief Justice, in the judgment he has just delivered, section 117 is not the ordinary offence of abetment, but makes punishable a different kind of offence altogether, that of inciting the public generally, or any number or class of persons exceeding ten, to commit an offence. As far as I can see I think the learned Magistrate's conclusion is correct and there is no reason for interfering.

*Rule discharged.*

B. G. R.

## CRIMINAL REVISION.

*Before the Honourable Mr. J. W. F. Beaumont, Chief Justice, and Mr. Justice Murphy.*

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*November 21*

EMPEROR *v.* BALKRISHNA ANANT HIRLEKAR AND OTHERS.*

*Criminal Law Amendment Act (XIV of 1908), sections 16 and 17 (1)—Government Notification—Gazette Extraordinary—Publication—Association declared unlawful—Reasonable opportunity must be afforded to members to see Gazette—Criminal Procedure Code (V of 1898), section 342—Joint statement of all accused—Conviction illegal.*

In order to prove that an association heretofore lawful has been declared unlawful under the Criminal Law Amendment Act XIV of 1908, the Government must not only insert the declaration in the official Gazette but must publish the Gazette in the manner usually adopted for publishing such Gazette, and allow a reasonable opportunity to people concerned to see the Gazette so that they may regulate their conduct accordingly.

A notification was published in the form of a Gazette Extraordinary dated "Poona, 14th October 1930," declaring an association known as Akhil Bharat Prabhat Sangh unlawful. The accused who were the members of a body affiliated to the Sangh, were arrested at 5-50 a.m. on the morning of October 15. Their plea of not guilty was recorded in a joint statement. They were convicted by the Magistrate under section 17 (1) of the Criminal Law Amendment Act, 1908. On an application to the High Court,

*Held*, that the conviction was illegal on two grounds: (1) the accused had no reasonable opportunity to see the Gazette as there was no evidence as to the time of its publication or the method by which it was published; (2) that the Magistrate did not comply with the provisions of section 342 of the Criminal Procedure Code, in that he took a joint statement from all the accused and did not examine them separately.

*Criminal Revision Application No. 414 of 1930.