

1934

DIGAMBAR
KASHINATH
v.
EMPEROR*Beaumont C. J.*

of the property or the accused may have inherited property after he served his sentence in default; or there may not have been time to execute the warrant. Matters of that sort would all be special reasons for issuing a warrant after the sentence in default had been served; and I think, in the same way, they are reasons justifying the Court in refusing to withdraw a warrant already issued. In the present case, in my opinion, there are special reasons, though not quite those which were recorded by the Judge. I think that a special reason for not withdrawing the warrant is that before the sentence in default had been served the authorities had taken steps to enforce this warrant by levying execution upon the immoveable property of the applicant, and the delay which has taken place is not, in my opinion, shown to be due to any default on the part of the authorities. The learned Judge himself gave as his reasons for not withdrawing the warrant that the offence was a serious one, and the complainant had been allotted part of the fine. In my view, reasons of that sort are not relevant because they do not account for the fine not having been recovered before the service of the sentence in default. For these reasons, I think the application must be refused.

N. J. WADIA J. I agree.

Application refused.

Y. V. D.

APPELLATE CRIMINAL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice N. J. Wadia.

EMPEROR v. MANCHERSHAW NASSERWANJI (ORIGINAL ACCUSED)*

1934
December 6

Criminal Procedure Code (Act V of 1898), section 562 (1A)—Offence punishable with fine only—Ac used released on “due admonition”—Applicability of the section—Indian Penal Code (Act XLV of 1860), section 290.

Section 562 (1A) of the Criminal Procedure Code, 1898, also covers offences punishable only with fine.

Emperor v. Kasturi,⁽¹⁾ referred to.

*Criminal Reference No. 189 of 1934.

⁽¹⁾ (1926) 28 Bom. L. R. 1031.

CRIMINAL REFERENCE made by V. S. Bhide, District Magistrate of West Khandesh, for revision of an order passed by M. L. Rasal, Magistrate of First Class at Taloda.

1934

EMPEROR
v.
MANCHERSLAW

The accused was charged under section 290 of the Indian Penal Code, for having let dirty water overflow from a sink in his house so as to cause injury or annoyance to the public. The First Class Magistrate, Taloda, convicted him of the offence, but instead of inflicting a fine gave him the benefit of section 562 (1A) of the Criminal Procedure Code and released him with an admonition.

The District Magistrate of West Khandesh being of opinion that the order passed by the Magistrate was contrary to law, made a reference to the High Court on the following grounds :—

“Section 290 of the Indian Penal Code is punishable with fine only ; and section 562 (1A) of the Criminal Procedure Code is applicable to those sections of the Indian Penal Code where imprisonment can be awarded. Section 562 (1A), of the Criminal Procedure Code, is not therefore applicable in this case, and the Magistrate’s order is illegal.”

The reference was heard.

R. F. Bhiladvala, for the accused.

P. B. Shingne, Government Pleader, for the Crown.

BEAUMONT C. J. This is a reference made by the District Magistrate of West Khandesh. The accused was convicted by the First Class Magistrate, Taloda, of an offence under section 290 of the Indian Penal Code, and he was released with an admonition by the Magistrate who purported to act under the powers conferred by section 562 (1A) of the Criminal Procedure Code.

The learned District Magistrate has referred the matter to this Court because he considers that section 562 (1A) does

1934
 EMPEROR
 v.
 MANCHERSHAW
 Beccumot C. J.

not apply to any offence punishable only with fine, as is an offence under section 290, Indian Penal Code. Section 562 is designed to enable the Court to deal leniently with first offenders convicted of offences not of the first gravity, and it is certainly strange to suggest that the section does not apply to offences of such a minor character as to be punishable only with fine. Sub-section (I) deals with offences "punishable with imprisonment for not more than seven years", and if the words are construed literally, it may be said that they do not cover an offence punishable with fine and not with imprisonment, and this view of the sub-section was taken by this Court in *Emperor v. Kasturi*.⁽¹⁾ Sub-section (IA) deals with offences "punishable with not more than two years' imprisonment", and taking these words literally they seem to cover an offence punishable only with fine, which cannot be said to be more than two years' imprisonment.

I do not suppose that the Legislature intended to found any distinction upon the different phraseology used, and personally I should have been prepared to hold that both sub-sections apply to offences punishable with a less severe sentence than that referred to in the respective sub-sections, and I should say that a fine is a less severe sentence than imprisonment (see section 53, Indian Penal Code). We are bound by the decision of this Court already referred to upon the construction of section 562 (I), but I see no reason why we should not give to section 562 (IA) a meaning justified by a literal construction of the language and consonant with what appears to be the intention of the section, and hold that the sub-section covers offences punishable only with fine. No order will, therefore, be made on the reference.

No order made.

J. G. R.

⁽¹⁾ (1926) 28 Bom. L. R. 1031.