

sobriety on the other. In the second place, though the lower Appellate Court might consider that it is not for vendees to look to the application of the purchase-money, still this is not the sole ground on which a legal necessity may be held to be established.

We think the lower Appellate Court is wrong in both those views. In the well known and often cited case of *Hunooman Persaud Panday v. Mussamat Babooee Munraj Koonveree* (1), it is true it is incidentally laid down that it is not necessary in alienation under Hindu law that a vendee should look to the application of the purchase-money, but it is laid down that he shall make all due enquiry as to the actual pressure and necessity for the alienation such as a reasonably careful man might be expected to do in ordinary properly conducted business transactions. In the present case, however, there is nothing to show that the purchaser made proper enquiries; or that there was any *shradh*, any debt, any pressure on the estate for want of money to defray the Government revenue or any decrees of Court, or other actual such like exigency for which the alienor was driven to the necessity of alienating the property in order to procure the means of providing some one or other of those cases. There is no evidence to show that the marriage referred to by the Subordinate Judge required such an amount as fairly could not be met but by the alienation aforesaid. On the whole, we think, that the legal necessity is merely assumed by the lower Appellate Court against the principle of the Hindu law and the precedents of our Courts.

The case is accordingly remanded to the Subordinate Judge, who will put in issue whether there was any legal necessity for the vendors to alienate the property. If such necessity is proved by the defendants against the rights of the plaintiffs who come as heirs, he will dismiss the plaintiffs' suit. If, on the contrary, such necessity is not proved, the Subordinate Judge will give the plaintiffs a decree by setting aside the alienations,

The costs will follow the result.

Before Mr. Justice Ainslie and Mr. Justice Paul.

THE QUEEN v. RAMDYAL SING AND ANOTHER.*

1871
Oct. 9.

Criminal Procedure Code (Act XXV of 1861), s. 404—Act XIII of 1867 ss. 20 & 30.

Upon the conviction of certain persons under section 20, Act XIII of 1867, for illicit possession of opium, the Magistrate sentenced them to payment of a fine, and directed that upon the realization thereof one-half should be paid to the Inspector of Police who had apprehended the prisoners, but refused to pay the other half in accordance with section 30 (for reasons set forth in his order) to the person who gave the information.

On a reference by the Sessions Judge to the High Court,—

* Reference under section 431 of the Code of Criminal Procedure, by the officiating Sessions Judge of Patna.

(1) 6 Moore's L. A., 393.

1871

THE QUEEN
v.
RAMDYAL
SING.

Held, the High Court could not interfere under section 404 of the Code of Criminal Procedure. The distribution of the fine under section 30, Act XIII of 1867, forms no part of the Magistrate's judgment.

THE following case was submitted to the High Court by the Officiating Sessions Judge of Patna :

"Ramdyal Sing was convicted by the late Officiating Joint Magistrate under section 20, Act XIII of 1867, and sentenced to pay a fine of 800 rupees, half of which was, under section 30, awarded to the Sub-Inspector of Police who apprehended him. The Officiating Joint Magistrate however, refused to award the remaining half to Sheo Gobind Behari because information had been given by an anonymous petition, which^h declared that the writer would not be responsible if no opium was then found. Notwithstanding that, in his judgment he states that Sheo Gobind, through spite, charged his uncles (one of them the convict) with having illicit opium in their houses, and the evidence shows that information was given to the Police by an anonymous letter delivered by Ghasita Kurmi, who, on being questioned by the Sub-Inspector, said that he had received it from Sheo Gobind, and the latter, when asked, admitted that he had written and sent this letter.

"There can, therefore, be no doubt that Sheo Gobind was the informer, and as the law, section 30, declares that the other half of the fine levied from persons convicted under section 20, together with a reward of one rupee eight annas for each seer of opium confiscated, shall be given to the informer, I am of opinion that the Officiating Joint Magistrate acted contrary to law in refusing to give it to Sheo Gobind, and that his order should be set aside."

The judgment of the High Court was delivered by

AINSLIE, J.—We think that we cannot interfere under section 404 of the Criminal Procedure Code. Under section 26, Act XIII, 1867, all fines, penalties and confiscations prescribed by the Act, shall be adjudged by the Magistrate. Under section 30, "one half of all fines and penalties levied from persons convicted of offences under sections 19, 20, and 21 of the Act, together with a reward of one rupee and eight annas for each seer of opium confiscated and declared by the Civil Surgeon to be fit for use, shall, upon adjudication of the case, be awarded to the officer or officers who apprehended the offender, and the other half of such fines and forfeitures, together with a reward of one rupee and eight annas for each seer of opium confiscated, as aforesaid, shall be given to the informer." The section then goes on to provide that "when the fine or penalty is not realized, the Board of Revenue may grant such reward, not exceeding Rs. 200, as may seem fit."

We think that the Magistrate is not bound to declare in his judgment how the fine shall be disposed of. It is his duty to adjudge the fine, and it is a

necessary consequence of such adjudication that the penalties realized shall go to the parties indicated by the Act. If no fine comes into the Magistrate's hands under the adjudication, the matter then passes to the Board of Revenue who can grant a reward. This appears to indicate clearly that the distribution of the penalty is no part of the judgment, and, therefore, not a matter over which this Court can exercise control.

There is another point which the Sessions Judge seems to treat as immaterial, but on which we entertain considerable doubt,—namely, whether a person who does not come forward in person as an informer and take the responsibilities together with the possible profits of his information, is entitled to any part of the penalties recovered. It is however not necessary to consider this matter at length. We cannot interfere. Let the papers be returned to the Sessions Judge.

1871

THE QUEEN
v.
DWARKA
NATH HAZRA.

Before Mr. Justice Kemp and Mr. Justice E. Jackson.

THE QUEEN *v.* DWARKA NATH HAZRA (PETITIONER).*

Act III of 1864, B. C., s. 67—Fine for suffering Premises to be in a filthy State

Dwarka Nath Hazara petitioned the High Court stating as follows :

1871
Nov. 25.

1. That your petitioner practises as a mookhtear in the district of Burdwan, and is the mookhtear of Baboo Pyari Mohan Mookerjee and several other persons. That Baboo Pyari Mohan of Uttarpara, Zilla Hooghly, is the owner of a piece of land near the Railway Station which is occupied by his tenants Annada Prasad Bhuttacharjee and others.

2. That the said Annada Prasad and others deposited certain broken earthen pots and some *sál* leaves on the land.

3. That thereupon your petitioner, as the mookhtear of Baboo Pyari Mohan Mookerjee, was fined by Mr. Cockburn, Municipal Commissioner, in the sum of Rs. 50, on the 23rd February last.

4. That your petitioner thereupon appealed to the Chairman, who rejected the appeal on the 20th March last.

5. That your petitioner then brought a Civil suit, which was dismissed on the 21st July last on the ground that the suit does not lie.

6. That your petitioner therefore begs to move your Lordships under sections 404 and 405 of the Criminal Procedure Code, and prays that the order of Mr. Cockburn, dated the 23rd February last, be quashed, and the fine be directed to be refunded.

Baboo *Anand Chandra Ghosal* for the petitioner.

The judgment of the Court was delivered by

* Miscellaneous Criminal Case, No. 142 of 1871, against an order of the Municipal Commissioner of Burdwan, dated the 23rd February 1871.