(1868) 06 CAL CK 0025

Calcutta High Court

Case No: None

The Queen		APPELLANT
	Vs	
Nagardi Paramanik		RESPONDENT

Date of Decision: June 2, 1868

Judgement

Glover, J.

In this case one Nagardi Paramanik was charged with being a member of an unlawful assembly, and with criminal trespass, under sections 143 and 447 of the Penal Code, and whilst the case against him was pending, be brought a counter-charge of criminal trespass against his accuser. Both oases were disposed of on the 29th of February 1868. The charges under sections 143 and 447 were held to be proved against Nagardi, whilst his counter-charge was dismissed as false, and he was further convicted of bringing a false complaint u/s 211, Penal Code. Nagardi was sentenced in each case to one month''s imprisonment, and the question is, whether these two sentences are to be taken as forming one and the same sentence, and as such appealable to the Sessions Judge.

2. The Magistrate at whose instance this case has been referred to us, u/s 404, Code of Criminal Procedure, holds that as the two convictions were of entirely different offences committed on different dates and in different places, the punishments awarded necessarily form separate and distinct sentences, and, being each within the limit of one month, were not appealable.

3. The Sessions Judge, on the other hand, following a decision of the High Court of the N.W. Provinces, holds, that the two sentences form together one ground of appeal, and being beyond the limit, are appealable to his Court.

4. The Judge has not referred us to the decision on which he relies, nor have we been able to find it, but we do find one of this Court, dated the 6th August 1866, The Queen v. Morly Sheikh, 6 W. R. 51, in which the contrary principle is distinctly laid down.

5. In support of the Judge''s ruling, it is contended, that the words of section 46 of the Code of Criminal Procedure suppose that any number of different penalties imposed for different offences tried at the same time, make up only one sentence, but there is nothing in the section to bear out such a construction; on the contrary, the Court convicting a prisoner of several offences is bound to sentence such prisoner to the several penalties prescribed by law, the one penalty commencing after the expiry of the other, and the only limit (under a certain proviso) is the extent of punishment, which the particular Court before which the cases are tried is competent to inflict. The object of the section is to award a specific punishment, for each particular offence, of which an accused person may be proved guilty, when all the charges against him are tried together, so that in case some one or other of the charges break down on appeal, the amount of punishment to be remitted may be known.

6. Section 411, Code of Criminal Procedure, lays it down most clearly, that in all cases a sentence of one month''s imprisonment passed by a Magistrate exercising full powers, is not appealable, and if it had been the intention of the legislature to circumscribe a Magistrate''s powers in this respect, and by lumping together two sentences each within the limit, because they happened to be passed at the same time, to make up one whole sentence, which would be beyond the limit, and therefore appealable, it would, no doubt, have said so.'' The principle laid down by the Judge would be applicable to cases where an accused person has been punished separately for what are really parts of one and the same offence, and not to cases like the present, where the offences are essentially different, and were committed at different times and places. We think, therefore, that the Magistrate was right, and that no appeal lay to the Judge. The accused should be re-committed to jail to undergo the remaining portion of his sentence.

---

(1) S. 411 of Act XXV of 1861.--"In all cases in which a Court of Session or the Magistrate of a district or other officer exercising the powers of a Magistrate shall pass a sentence of imprisonment not exceeding one month, or of a fine not exceeding fifty rupees, no appeal shall be allowed."

(2) No reference given.