

Hamid Khan Vs. Emperor

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Court : Allahabad

Decided On : Mar-28-1947

Reported in : AIR1948All59

Appellant : Hamid Khan

Respondent : Emperor

Judgement :

Raghubar Dayal, J.

1. Hamid Khan appeals against his conviction under Section 379/511 read with Section 75, Penal Code, and a sentence of seven years' rigorous imprisonment. The conviction of the appellant under Section 379/511, Penal Code is correct. The sentence of seven years' rigorous imprisonment with the aid of Section 75, Penal Code is, however, illegal.

2. Section 75, Penal Code, provides for enhanced punishment when a person is convicted of an offence punishable under chap. 12 or Chap. 17, Penal Code, with imprisonment of either description for a term of three years or upwards. The offence of attempt to commit theft does not fall under Chap. 17, Penal Code. It really falls under chap. 23 of the Code. It follows, therefore, that Section 75, Penal Code cannot apply to persons who are convicted for attempting to commit theft. A similar view has been taken in the cases reported in *Empress of India v. Ram Dayal* ('81) 3 All. 773, *Queen-Empress v. Ajudhia* ('95) 17 All. 120, *Queen-*

Empress v. Bharose ('95) 17 All. 123 and Brij Behari Lal v. Emperor : AIR1926 All44 .

3. I, therefore, dismiss the appeal but modify the sentence to the effect that I reduce the sentence of seven years' rigorous imprisonment passed by the Court below to a sentence of one year and a half rigorous imprisonment, the maximum punishment permissible under the law for an offence under Section 379/511, Penal Code.

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