

Lal Chand Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/451918

Court : Allahabad

Decided On : Aug-05-1947

Reported in : AIR1948All107

Appellant : Lal Chand

Respondent : Emperor

Judgement :

ORDER

Wanchoo, J.

1. This is a revision by Lal Chand against the order of Mr. Brij Nandan Lal Temporary Civil and Sessions Judge, Muttra, dismissing the appeal or revision of the applicant from his conviction by a Magistrate of the first class on a summary, trial under Rule 81(4), Defence of India Rule.
2. The applicant had filed an appeal in the Sessions Court, but the learned Sessions Judge has treated it as a revision.
3. The contention on behalf of the applicant before me is that in view of the fact that the applicant was sentenced to a fine of Rs. 200 and gur worth Rs. 1000 had been forfeited, he had a right of appeal and his appeal should have been heard as such by the learned Sessions Judge. I agree with this contention of the learned Counsel for the applicant and shall give my reasons below.

4. Section 415, Criminal P.C., says that an appeal may be brought against any sentence referred to in Section 413 or Section 414 by which any punishment therein mentioned is combined with any other punishment but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace. The only question, therefore, that has to be decided is whether the order of forfeiture passed by the learned Magistrate amounts to 'any other punishment' within the meaning of Section 415, Criminal P.C. Section 58, Penal Code, has enumerated the different kinds of punishment' including, fifthly, forfeiture of property. 'Forfeiture of gur by the order on the learned Magistrate obviously amounts to forfeiture of property.' The provision as to forfeiture is provided in Rule 81(4) Defence of India Rules which says that if the order so provides any Court trying such contravention may direct that any property, in respect of which the Court is satisfied that the order has been contravened, shall be forfeited to His Majesty. The reason why forfeiture provided under Rule 81(4) is couched in these terms is that it may be that some of the orders passed under Rule 81(4), Defence of India Rules, may not provide for forfeiture at all. But where an order passed under Rule 81(4), Defence of India Rules, does provide for forfeiture of property with respect to which the order has been contravened, this forfeiture clearly amounts to a punishment as enumerated in Section 53, Penal Code. Therefore, when forfeiture is added to the sentence of fine, an appeal would lie under Section 415, Criminal P.C, even though the sentence of fine itself may not have been appealable. In this lease, therefore, as forfeiture has been added to a sentence of fine, the order of the Magistrate was appealable to the learned Sessions Judge who should have dealt with it as an appeal.

5. I think it best, therefore, to send the case back to the learned Sessions Judge to rehear the case treating the matter before him as if it was an appeal. The revision is allowed to this extent.