

Emperor Vs. Bhola and ors.

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Court : Allahabad

Decided On : May-18-1917

Reported in : (1917)ILR39All549

Judge : Piggott, J.

Appellant : Emperor

Respondent : Bhola and ors.

Judgement :

Piggott, J.

1. This was a case in which eleven persons were jointly tried before a Magistrate of the first class in respect of offences charged under Section 409 and Section 424 of the India Penal Code. Three men were convicted under the former of these sections and received appealable sentences. The remaining eight, Bhola and others, being convicted on a charge under Section 424 of the Indian Penal Code, were sentenced to fine only. The three first mentioned appealed to the Sessions Court, and the learned Sessions Judge, in a carefully reasoned judgement, has accepted their appeal on 'the facts. He has accordingly set aside the conviction and sentence against these three men and has acquitted them and ordered their release. The case of the eight men against whom unappealable sentences were passed has been referred to this Court. As the Code of Criminal Procedure at present stands, there is room for controversy as to whether, in a case like the

present, an appeal from those accused persons in respect of whom the sentence passed was individually unappealable is barred by the provisions of Section 413 of that Code. I take this opportunity of stating that, although I have myself expressed and acted upon the view that the provisions of Section 413 aforesaid do not operate so as to take away the right of appeal which would otherwise be conferred, in any case tried by a Magistrate of the first class, to the court of Session by Section 408, I find that this view has not been generally accepted in this Court and has been expressly dissented from by the present acting Chief Justice. I do not propose, therefore, further to insist on my own individual view in this matter. So far as I am concerned, the law may be taken as settled in accordance with what I admit to have been the prevailing practice in this Court. If, therefore, at one and the same trial, an appealable sentence is passed against one or more accused and unappealable sentences against others, and the learned Sessions Judge, hearing the case on the merits on the appeals of those convicts who had a right of appeal, comes to the conclusion that the convictions were bad as against all the persons accused, he should consider it his duty to refer to this Court the case of those persons against whom unappealable sentences were passed. The matter can then be dealt with by this Court under its general revisional jurisdiction as provided by Section 439 of the Code of Criminal Procedure. The procedure is clumsy, and I hope to see it amended by a reasonable modification of the law. At present this must be taken as the settled procedure of this Court under the Code as it stands. I have no doubt that the learned Sessions Judge was right in this case. I accept his reference, and, for the reasons given by him, I set aside the convictions and sentences against Bhola and each of the other seven men named in the referring order. I acquit them of the offence charged and direct that the fines imposed upon them, if paid, be refunded.