Behari and ors. Vs. the State

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Court : Allahabad

Decided On : Feb-16-1953

Reported in : AIR1953All510

Judge : Desai, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 71, 147, 149, 323, 324, 325 and 326; Code of Criminal Procedure (CrPC) , 1898 - Sections 35

Appeal No. : Criminal Revn. No. 294 of 1953

Appellant : Behari and ors.

Respondent : The State

Advocate for Pet/Ap. : Jagdish Sahai, Adv.

Disposition : Application dismissed

Judgement :
ORDER

Desai, J.

1. This is an application in revision by nine men against their conviction and sentences under Sections 147, 148, 325 and 326 read with Section 149, I. P. C.

2. On 29-4-1951 at about 5-30 p.m. when Dharmi and Makundi were returning home from a bazar, they were surrounded by the applicants, who were waiting for them, and struck with lathis and spears. Dharmi received 14 injuries and Makundi, 15. Three of Makundi's injuries were caused with sharp-edged and sharp-pointed weapons and the rest were caused with blunt weapons. Among the rest was a contused wound in which there was a fracture of both the bones of the rest forearm. Dharmi also had injuries caused with sharp-edged and blunt weapons; three of his injuries were grievous, one of them was caused with a sharp-edged weapon. There is ample evidence to prove these facts. The courts below did not act improperly or illegally in accenting it and rejecting the defence. The applicants were rightly convicted under Sections 147 or 148, 325 and 326 read with Section 149, I. P. C.

There is no truth in the complaint of the applicants' counsel that the appellate court ignored the evidence of the defence witnesses who had given evidence regarding enmity. Five defence witnesses were examined, two of whom gave evidence about the occurrence. The appellate court discussed their evidence when dealing; with the prosecution evidence about the occurrence. It did not mean to say that no other defence witnesses were examined. It did not. refer to the defence witnesses whose evidence was only circumstantial probably because the applicants' counsel did not rely upon that evidence before it. It must have considered and rejected it as useless, though without referring to it in the judgment. There was, therefore, no flaw in the hearing of the appeal.

3. Next it was argued that separate sentences under the various sections are illegal. The sentences imposed on each of the applicants are as follows: (1) under Sections 147 and 148 I. P. C., rigorous imprisonment for one year or 1 1/2 years and a fine; (2) under Section 325 read with Section 149, rigorous imprisonment for one year and a fine; and (3) under Section 326 read with Section 149, rigorous imprisonment for one year and a fine. Neither the Magistrate nor the appellate court has mentioned whether the sentences would be concurrent or consecutive. Therefore, they will be consecutive. The contention of the applicants is that separate sentences under Sections 325 and 326 read with Section 149 cannot be inflicted in addition to the sentence under Section 147.

4. The question is an important question; it is also a difficult one and has given rise to conflicts between High Court and High Court and between one Judge and another Judge of the same High Court. And it is answered in different ways in different cases.

5. When in the course of a transaction several offences are committed by an accused, for which of them he can be tried and convicted is a matter of procedure dealt with in Sections 233 to 239, Criminal P. C., and for which of them he can be punished is dealt with in Section 71, I. P. C.

If in one series of acts forming one transaction more offences than one are committed by an accused he may be charged with (and convicted of) for every such offence: Section 235 (1) of the Code. If the acts constitute

'an offence falling within two or more separate definitions ..... the person accused of them may be charged with and tried at one trial for each of such offences':

Section 235 (2).

'If several acts of which one or more of them would by itself or themselves constitute an offence, constitute, when combined, a different offence',

the person accused of them may be charged with the offence constituted by such acts when combined and for any offence constituted by anyone or more of such acts: 235 (3). Thus under Section 235 (1) an accused can be convicted under Sections 225 and 332, or Ss. 454 and 497, or Sections 147, 325 and 152, I. P. C.; under Section 235 (2) he can be convicted under Sections 323 and 325, or Sections 317 and 304, or Sections 471 and 196, I. P. C., under Section 325(3), he can be convicted under Sections 323, 392 and 394, I. P. C. These examples are token from the illustrations to the section.

6. Section 71, I. P. C. is in three parts. The first part is:

'Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more

than one of' such offences',

the second part is:

'Where anything is an offence falling within two or more separate definitions of any law in force, the offender shall not be punished with a more severe punishment than the court which tries him could award for any of such offences',

and the third part is:

'where several acts of which one or more would be itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the court could award for any such offence'.

The first part deals with a continuous or continual series of similar acts each forming the same offence or offence of the same nature as the whole series; for instance, giving a man fifty strokes with a stick (see illustration (a) to Section 71), stealing five articles from an owner, abducting a female from her residence and taking her through several places in continuation etc. Illegally giving strokes with a stick is an offence punishable under Section 323, I. P. C.; as soon as one stroke is given, hurt is caused and the offence is completed. When the next stroke is given, hurt is again caused, and another offence committed. The same is the case with the examples of offences under Sections 379 and 366, I. P. C. There is nothing in the Code of Criminal Procedure to prevent the accused from being convicted under Section 323, I. P. C. as many times as there are blows given by him. But when it comes to punishing him, the first part of Section 71, I. P. C. provides that he cannot be punished with the punishment of more than one of the offences. So for practical purposes, the whole beating is treated as one offence under Section 323 I. P. C. the whole act of stealing several articles is one offence under Section 379, I. P. C. and the whole act of abducting the female to various places is one offence under Section 366, I. P. C. If he cannot be punished more than once for the several offences committed by him, it would be no use convicting him of the several offences; that is why in practice only one charge under Section 323 or 379 or 366, I. P. C. is framed and only one conviction is recorded.

An important point to be noticed is that the first part deals with a case in which the whole of the act is punished under the same section under which its parts are punished; it does not deal with a case in which the whole act constitutes an offence different in nature from the offence or offences constituted by its parts. This is made clear not only by the illustration but also by the provision about the punishment. The provision is that the accused must not be punished with the punishment of more than one of the offences. The restriction is on the number of the sentences to be passed and not on the quantum. The very fact that he is required to be punished only once shows that otherwise he would be liable to be punished several times, i. e., several times for the same offence. Were the part dealing with a case in which the accused is liable for the various offences under different sections to punishments different from one another, the restriction would not have been that he should be punished only once or for only one offence; it would have been similar to that imposed under the second and third parts.

Another fact to be noticed is that there must be more than one act done by the accused; otherwise it cannot be split up into parts each of which must be an act. The second and the third parts deal with offences committed by an accused which are punishable under different sections to punishments different from one another and so the restriction is that he should not be punished more severely than he could be punished for any of those offences. Because the offences committed by him are different in nature, the legislature has provided that he can be punished upto the maximum provided for the gravest offences.

It is said in Ratan Lal's Law of Crimes that the first part provides for the punishment for cases similar to illustration (1) to Section 235 (2) of the Code, but that is obviously wrong. It provides for the punishment for offences, the trial of which is dealt with in Sections 234 and 235 (1). The second part provides for the punishment for an act punishable under two or more sections, the trial of which is dealt within Section 235 (2) of the Code. The third part provides for the punishment for a series of dissimilar acts some of which themselves are offences though differing from the offence constituted by the whole series, the trial of which is dealt with in Section 235 (3) of the Code. The third part is inapplicable when only one act is done by the accused.

As the second and the third parts deal with offences differing from one another committed by an accused, the restriction is not that he can be punished with the punishment of only one of the offences, but that he should not be given a punishment exceeding the maximum that could be given for any of the offences. The court is not expressly debarred from punishing him separately for the various offences committed by him, nor is it debarred from making the sentences for the various offences cumulative. There is only one restriction and it is that the punishment should not exceed the maximum provided for any of the offences. If the court inflicts separate sentences for the various offences and makes them cumulative, and the total does not exceed the maximum provided for any of those offences, or if it makes the sentences concurrent and the imprisonment to be suffered by the accused does not exceed the maximum provided for any of the offences, the law is fully complied with.

The language in which the restriction is couched suggests that the infliction of separate sentences for the various offences is not barred but rather contemplated. Of course, the restriction is capable of being interpreted to mean that the accused will be punished as if he had committed only the gravest of the offences committed by him. But it does not exclude the interpretation that he can be punished separately for the various offences committed by him provided the total punishment does not exceed the maximum provided for the gravest offence. Therefore, the infliction of separate sentences for the various offences, provided the limit is not exceeded, cannot be said to be against the law.

7. An accused must be convicted of every offence with which he has been charged and which is proved against him and this, regardless of whether he can separately be punished for every offence or not. Ordinarily he must be punished for every offence of which he has been found guilty. The sections under which he is convicted themselves lay down that he should be punished within certain limits. Section 71 is the .only section that places restrictions upon the separate punishment for every offence of which he is convicted. There are no other restrictions. If a case is not governed by Section 71, the accused is liable to be punished separately for each offence (of which he has been convicted) up to the maximum provided for it.

8. The question is whether an accused can be punished separately for the offences of Section 147 and 323, or 324 or 325 or 326, I. P. C. read with Section 149, I. P. C. Being a member of an unlawful assembly is an offence punishable under Section 143. The offence of Section 147, I. P. C. consists of being a member of an unlawful assembly, any member of which uses force or violence in prosecution of its common object. If any member commits any offence in prosecution of its common object, every member of it is guilty of that offence; this is Section 149, I. P. C. Thus both the Sections 147 and 149, I. P. C punish an accused for being a member of an unlawful assembly, the former when any member of it uses force or violence and the latter, when he commits some offence. Because mere use of force or violence is not an offence, enactment of Section 147 was necessary in addition to enactment of Section 149. It is not necessary that the force or violence should be used by the accused himself in order to be guilty of Section 147, I. P. C., and similarly it is not necessary for him to commit the offence in order to be guilty of it. If he himself, while being a member of an unlawful assembly commits an offence, he is undoubtedly guilty of it. But even if somebody else commits it, he is equally, guilty under Section 149. One fact to be borne in mind is that the section makes him liable just because he is a member of the assembly; it does not require any act to be done by him as a member. It does not even say that he is deemed to have done the act. It just punishes him because the act was done in prosecution of the assembly's common object. It thus creates an offence which does not require any act to be done. Ordinarily the fact is of no importance but it assumes importance when there arises the question of the number of acts done by the accused, as for instance under the third part of section 71,

The provisions of Section 149 have been interpreted in a number of cases, for instance, -- 'Queen Empress v. Bisheshar', 9 All 645 (A); -- 'Raghubar v. Emperor AIR 1939 Oudh 91 (B); --'Baldeo Singh v. Emperor 'Faiyaz Khan v. Emperor AIR 1949 All 180 (D) and -- 'Barendra Kumar Ghosh v. Emperor . In 'Bisheshar's case (A)' Sir Johan Edge, C. J. said that Section 149 creates no offence but like Section 34, I. P. C., merely declares a principle of the common law that has prevailed in England (p. 649) and that its object is to make it clear that an accused who comes within it cannot put forward as a defence that it was not his hand which inflicted the

hurt (p. 650).

In 'Barendra Kumar's case', (E) the Judicial Committee speaking through Lord Sumner observed at page 52 that the section creates a specific offence and deals with punishment of that offence alone. That observation was explained by Yorke, J. in 'Raghubar's case', (B) at p. 93. The learned Judge said that Section 149 itself is not a section which creates an offence in the same sense as Section 147 does, that it does create an offence though only in the isense that it creates in all the persons who have taken part in a riot the same offence as is committed by the particular individuals who cause hurt, that is, enlarges the area of guilt under Section 323 or Section 325 or whatever the section may be, in cases to which Section 147 applies and that it certainly does not create a new offence composed partly of rioting and partly of the offence constructively committed. In 'Baldeo Singh's case', (C) Niyogi, J. stated that the effect of the section is to make every member of an unlawful assembly in the eye of the law a principal offender in respect of an act falling within the ambit of the common object, so as to make him primarily responsible for the consequences of the physical act of any of the members.

9. 'Force' is defined in Section 149, I. P. C. to mean causing motion, change of motion or cessation of motion. Violence is not defined. Hurt is defined as causing bodily pain, disease or infirmity. Evidently hurt is not the same thing as force; it is also not the same thing as violence, of which pain or disease or infirmity is not an essential ingredient; see -- 'Queen Empress v. Bana Punja', 17 Bom 260 (F); -- 'Emperor v. Katwaru Rai', AIR 1917 All 11 (G); --'Sothavalan v. Rama Kone AIR 1933 Mad 338 (H) and -- 'Anthony Udayar v. Royap-pudayar : AIR1928 Mad18 . In the 'Bombay case', (F) Jardine, J. in his referring order remarked that force and violence have not the same meanings as are commensurate with the word 'hurt'.

In 'Anthony Udayar's case', (I) Wallace, J. stated that the force necessary to constitute the offence of rioting may fall short of causing bodily pain, and if further force is used which does cause bodily pain, the offence of rioting has been exceeded and the excess constitutes another offence of causing hurt punishable under Section 323, I. P. C.

10. When A, B, C, D and E form an assembly with any of the common objects mentioned in Section 141, each of them becomes guilty under Section 143. If in furtherance of the common object A gives a blow, he does two further acts, one of being a member at the moment of giving the blow and the other of causing hurt and commits the offences of Sections 147 and 323 in addition of that of Section 143. He can be separately convicted and sentenced under Sections 143 and 323; Section 71 would not come into application at all because the act of giving the blow is not an ingredient of the offence of Section 143. Separate punishments under Sections 143 and 147 would be barred by the first part of Section 71 because the acts of being a member done every moment are parts of the whole offence of being a member. His punishment under Sections 323 and 147 will be governed by the third part. It is because of the blow that he simultaneously commits the offences of Sections 147 and 323. Giving a blow itself is an offence under Section 323 but when it is combined with the facts of his being a member and of his acting in furtherance of the common object, the offence of Section 147 also is committed. In the result, he can be separately convicted and sentenced under Sections 143 and 323 without any restriction, or under Sections 147 and 323 subject to the third part of Section 71. If it be said that he does not commit offences of Section 143 at every moment during his membership, he does only two acts, one of being a member and the other of causing hurt and for those two acts, he is punishable under Sections 147 and 323.

The original offence of Section 143 committed by him when he became a member becomes aggravated by his causing hurt into an offence of Section 147. In that case he can be separately convicted under Sections 147 and 323 but his punishment will be governed by the third part of Section 71. As regards B (and also C, D and E) the acts done by him are the original membership and the membership at the time when A gives the blow. He thus commits two offences punishable under Sections 143 and 147. Section 149 makes him further liable under Section 323. He cannot be separately punished under Sections 143 and 147 as already explained. He can be punished under Sections 143 and 323 read with 149 without any restriction; Section 71 does not apply. He can also be punished under Sections 147 and 323 read with 149. In this case Section 71 does not by its own force apply because he has not done any act besides that of being

a member and is not deemed to have done the act of causing hurt. But obviously he cannot be punished more severely than A who actually caused the hurt and therefore his punishment for the two offences must be governed by the same restriction which governs the punishment of A for them.

One may also take the view that his punishment for the two offences is governed by the second part of Section 71 inasmuch as his being a member at the time when A causes hurt becomes punishable under both the sections. It does not matter whether the punishment is governed by the second part or the third part. If it be said that B does not do any new act by continuing his membership at the time of the hurt caused by A, then the offence of Section 143 becomes aggravated into that of Section 147 and in addition he becomes guilty under Section 323 read with Section 149. He would still be liable to the same punishment as if he had done two acts of membership. Suppose A gives a further blow or blows (the number of further blows is immaterial). Now the acts done by him are the original membership, the membership at the time of the first blow, the membership at the time of the second blow and the two hurts and commits the offences of Sections 143, 147 (first offence), 147 (second offence), 323 (first offence) and 323 (second offence). He cannot be punished separately under Sections 143 and 147, or under Sections 323 and 323 or under Sections 147 and 147; the first part of Section 71 creates the bar. He can be separately punished under Section 143 and Section 323. He can be separately punished for the first offence of Section 147 and the second offence of Section 323 without any restriction. Section 71 does net apply because he gave the second blow after he had completed one offence of Section 147.

The first offence of Section 147 combined with the second offence of Section 323, does not constitute a different offence. A different offence is constituted where the offence of Section 325 is combined with that of Section 143, but not when it is combined with that of Section 147.

In the result, he can be separately punished under Sections 147 and 323 without any restriction. If it be said that he has done only one act of membership, the acts done by him are the membership now punishable under Section 147, and the two

hurts punishable under Section 323 and Section 323. He cannot be separately punished under Sections 323 and 323. His separate punishment under Section 147 and the first offence of Section 323 is governed by the second or third part of Section 71 as explained above; but his punishment under Section 147 and the second offence of Section 323 is not governed by Section 71 because the second blow was given by him after he had completed the offence of Section 147 and forms no part of it at all.

In the result, he would be punished under Sections 147 and 323 separately without any restriction. Once more it makes no difference whether his membership at different stages is treated as one act or different acts. As regards B, the acts done by him are membership at three stages punishable under Sections 143, 147 and 147. In addition Section 149 makes him punishable under Section 323 and Section 323. He cannot be separately punished under Sections 143 and 147, nor can he be punished under Section 323 and Section 323; Section 71, part I, creates the bar. His punishment for the first offences of Sections 147 and 323 and for the second offences with the same sections is governed by the second or the third part of Section 71. But he can be punished separately without any restriction for the first offence of Section 147 and the second offence of Section 323 or for the first offence of Section 323 and the second offence of Section 147. Section 71 does not apply. In the result B can be punished separately under Sections 147 and 323 read with 149 without any restriction. If his membership at the different stages were treated as one act, he has done only one act viz. that of membership now punishable under Section 147.

In addition Section 149 makes him punishable under Sections 323 and 323. As explained, he cannot be punished twice under Section 323. His punishment under Section 147 and the first offence of Section 323 would be governed by the second or the third part of Section 71 but not his punishment under Section 147 and the second Offence of Section 323. Thus he can be separately punished under Sections 147 and 323 without any restriction.

The position, therefore, is that when A gives a further blow or blows, not only he but all other members of the assembly can be separately punished under Sections

147 and 323 without any restriction and Section 71 will not apply. Suppose instead of A B gives a further blow or blows. Then the acts done by A are the three acts of membership at the three stages punishable under Sections 143, 147 and 147 and one act of causing hurt punishable under Section 323. In addition he becomes liable to be punished under Section 323 by virtue of Section 149 for the hurt caused by B. He cannot be punished separately under Sections 143, 147 and 147. He can be punished separately under Section 143 and the first offence of Section 323. He can be separately punished under Section 143 and for the second offence of Section 323 read with Section 149.

I am inclined to think that his separate punishment under Section 323 for the first hurt and Section 323 read with Section 149 for the second hurt also is not barred because the case does not appear to be covered by Section 71 at all. If he gave both the blows the first part of Section 71 would apply; but I am not certain that it would apply if the blows are given by different men. I, however, express no definite opinion on this point because it is not material in the present, case. The punishment for the first offences of Sections 147 and 323 will be governed by the third part and also the punishment for the second offence of Section 147 and the second offence of Section 323 read with Section 149. But his punishment for the first offence of Section 147 and the second offence of Section 323 read with Section 149 is not governed by Section 71.

Thus he can be punished separately without any restriction under Sections 147 and 323. The same result will be achieved if his membership at the different stages were treated as one act. As regards B (and also C, D and E) he has done three acts of membership at the three stages punishable under Sections 143, 147 and 147, and the act of causing hurt punishable under Section 323. Section 149 has already made him, further punishable under Section 323 for the hurt caused by A. He may be separately punished under Section 143 and lor the first offence of Section 323 read with Section 149 and the second offence of Section 323 without any restriction; I do not express any definite opinion on his liability to be punished separately under Section 323 and Section 323/149. He can be separately punished without any restriction for first offence of Section 147 and the second offence of Section 323. If the membership were treated as one act, he would have

done two acts, one punishable under Section 147 and the other punishable under Section 323 for the second hurt & in addition he is liable to be punished under Section 323 read with Section 149 for the first hurt caused by A. He can be separately punished without any restriction under Sections 147 and 323 (for the second hurt). Thus he is liable to be punished in the same manner as A.

11. The conclusions that I arrive at are:

1. If only one blow is given by a member of an unlawful assembly all the members can be separately punished under Sections 143 and 323 without any restriction, or under Sections 147 and 323 subject to the restriction imposed by the second or the third part of Section 71.

2. The second and the third parts of Section 71 bar, not separate punishments for the various offences but the aggregate punishment exceeding the punishment provided for any of them.

3. When more than one blow is given, every member can be punished separately without any restriction under Sections 147 and 323; Section 71 will not apply.

4. The law makes no distinction between the actual assailant and other members. He does one more criminal act than the others but it does not follow that the law must provide for a severer punishment than that provided for the other members or that it must provide for a less severe punishment for the other members than that provided for him. The other members must not be liable to be punished more severely than the actual assailant but they can be made liable to be punished as severely as the actual assailant.

5. If any member uses force or violence not amounting to an offence punishable under Section 323 and then hurt is caused by any member, all are liable to be punished separately under Sections 147 and 323 without any restriction and Section 71 will not apply.

12. In -- 'Emperor v. Ram Partap', 6 All 121 (J) Straight, J. decided that an accused cannot be punished under Sections 147 and 325 read with Section 149. The stress of his argument was that the one essential ingredient towards

warranting the conviction under Section 325 was the membership of an unlawful assembly without which there could be no conviction and sentence for the offence of Section 147. He interpreted the language of Section 71 to mean that

'if in the course of a transaction a person commits different offences, inextricably mixed up with one another, and all graduating towards, essential to, and culminating in a single distinct offence, he is not to be punished separately upon conviction for such single and distinct offence, and for any or each of such other offences as well.' There is no discussion of the provisions of Section 71, nor is there any discussion of the meaning of the words 'shall not be punished for a more severe punishment.....any of such offences.'

Brodhurst, J. dissented from that view in --'Queen Empress v. Dungar Singh', 7 All 29 (K). He pointed out that an offence under Section 147 can be committed without causing hurt and that hurt can be caused without committing an offence under Section 147, that the two offences are distinct and that separate punishments upto the maximum prescribed for each offence can be inflicted.

The conflict between the views of Straight, J. and Brodhurst, J. gave rise to two Full Bench decisions in 1885. They are -- 'Queen Empress v. Pershad', 7 All 414 (L) and -- 'Queen Empress v. Ram Sarup', 7 All 757 (M). In 'Pershad's case', (L) the trial began before a second class Magistrate who became invested with first class powers before he delivered the judgment, the accused were convicted by him under Sections 325, 325 and 323 for causing grievous hurt to two persons and simple hurt to a third person and given separate sentences of two years' imprisonment and a fine, one year's imprisonment and a fine and three months' imprisonment and a fine respectively, and it was contended that the sentences were illegal because the Magistrate could not exercise the powers of a first class Magistrate in the case commenced by him as a second class Magistrate and separate sentences could not be passed for the three offences. The accused had really committed a riot and could have been convicted under Sections 147 and 148 also but had not been convicted under those sections. Four questions were referred to a Full, Bench of five Judges and the fourth question was whether a member of an unlawful assembly can be punished under Sections 147 & 325 or

not. The first question was the general question whether the sentences were legal or illegal. The fourth question really did not arise because the accused were not convicted under Sections 147 and 148. The question whether separate punishments could be inflicted for causing injuries to different men is quite different from the question that is being considered by me. Two of the Judges answered only the first question and held the sentences to be legal. The Chief Justice also answered only the first question but held the sentences to be illegal. Brodhurst, J. held the sentences to be illegal on other grounds but gave his opinion that they would have been legal if the Magistrate had convicted the accused under Section 148, and that a member of an unlawful assembly can be punished under Sections 147 and 325 both. Oldfield, J. thought that Section 71 had no application because there was no case of an offence made up of parts, any of which parts was itself an offence and that offences of Sections 323 and 325 form no part of the offence of Section 147 which is a separate offence. He also did not decide the last three questions.

As the Full Bench did not decide the question under consideration, another Full Bench was formed on a reference made by Straight, J. in the case of 'Ram Sarup', (M). There, the accused were separately punished under Sections 147 and 325 to three months' and six months' imprisonment respectively. The Chief Justice and two Judges including Straight, J. held in a very short judgment that the sentences were correct because the accused were shown to have committed individual acts of violence with their own hands which constituted distinct offences of Sections 325 and 323 separate from, and independent of, the offence of Section 147 which was already completed. On that ground they distinguished the case from 'Ram Partab's', (J). Brodhurst, J. held the sentences to be legal but on the ground that the accused can be separately punished under Sections 147 and 325 regardless of whether he himself has caused injuries or not. He pointed out that only one grievous hurt was caused, that it could have been caused by Only one of the accused persons and that the others could be guilty under Section 325 only if Section 149 applied. Merely because the other accused used violence, they would not be guilty under Section 325. When the Full Bench upheld the sentences as legal, it must have been, as pointed out by Brodhurst, J. on the ground that separate sentences can be inflicted under Sections 147 and 325 read with Section

149.

Two years later, the matter was dealt with by a Bench consisting of Sir John Edge, C. J. and Brodhurst, J. in the case of 'Bisheshar', (A). In that case there was an unlawful assembly which used force or violence, one of its members M. caused grievous hurt and all - the accused were convicted under Sections 147 and 325 and given separate sentences, the sentence of M. being one year & five years respectively & cumulatively. The Bench held the sentences to be legal and dissented from -- 'Empress v. Ram Partab', (J). Sir John Edge, C. J. said that if the case was governed by the second and third parts of Section 71, there was no contravention of their provisions because the aggregate punishment inflicted on M., viz., six years, was less than the maximum that could have been inflicted under Section 325. He observed that if the legislature had intended that in cases governed by these two parts, there should be punishment for only one offence, it would have said so and that there would have been little use in enquiring into, and convicting an accused of, two offences, if he could be legally sentenced for one offence only. In his opinion the case was not governed at all by Section 71 because Section 149 does not create an offence.

In -- 'Kure v. Emperor', AIR 1919 All 379 (N) the accused were convicted under Sections 147 and 323 read with Section 149 and given separata and cumulative sentences of the aggregate term of two years. Piggot, J. observed that because Section 149 was invoked, it was not sound, as a general rule, to pass cumulative sentences under the two sections. He upheld the separate sentence but made them concurrent. This alteration could not have been done as a matter of law; the law leaves it to the absolute discretion of the Court to make two sentences of imprisonment concurrent or consecutive. There is no law laying down when they should be concurrent and when consecutive. In any case Section 71 does not deal With this matter at all. Therefore, the effect of Mr. Piggott's judgment is to uphold the validity of separate sentences under Sections 147 and 323 read with Section 149. Sir George Knox, A. C. J. upheld separate sentences under Sections 147 and 323 in -- 'Emperor v. Katwaru Rai', (G). He proceeded on the basis that hurt was caused to two men R. and S. that the offence of Section 147 was complete when hurt was caused to R. and that a separate and distinct offence punishable under

Section 323 was committed when hurt, was caused to S.

The same reasoning was employed by Sulaiman, J. as he then was in -- 'Chhidda v. Emperor AIR 1936 All 225 (O), where two persons S. and B. were injured in a riot and the accused were punished separately under Sections 147 and 323 read with Section 149. The sentences were concurrent. Sulaiman, J. was of the opinion that when the first injury is. caused, the offence of Section 147 is completed and the infliction of subsequent injuries produces a distinct offence of Section 323. Following 'Chhidda's case', (O) Bajpai, J. in -- 'Emperor v. Sahab Raj Singh : AIR1933 All819 upheld separate sentences under Sections 147 and 325 read with Section 149 because more than one injury was caused by the unlawful assembly.

A very instructive decision dealing with the question is that of Mr. Justice Mahmood in --'Queen Empress v. Wazir Jan', 10 All 58 (Q). In that case Wazir Jan pretending to be an official in an octroi establishment extorted money from a man and was convicted under Sections 170 and 384 and sentenced to nine months' and nine months' imprisonment respectively, the sentences to run concurrently. Mahmood, J. held the sentences to be valid. The use of the word 'shall' in the sections was construed by him to 'indicate the imperative mandate of the Legislature that persons guilty of those offences are to be punished.' Section 71 was held by him to be, not a rule of adjective law or procedure but a rule of substantive law regulating the measure of punishment and not affecting the question of conviction which relates to the province of procedure. He said on page 63 that when certain acts constitute two or more offences, whether they fall or do not fall under the purview of Section 71, and the accused is charged and tried for those offences and they are established by the evidences, the court is bound to convict him of those offences. If a conviction is recorded, the Court must pass a sentence in respect of it; Mahmood, J. said on page 65 that an omission to do so is illegal and that:

'Just as the maxim 'ubi jus ibi remedium' is a rule of jurisprudence, so it is a principle of the criminal law that where there is an offence there must be a punishment, the general rule being in either case affected by exceptional provisions of the law.'

As regards the implication of the restriction imposed by the second & the third parts of Section 71, he quoted with approval from -- 'Emperor of India v. Budh Singh', 2. All 101 at p. 104 (R). There Turner, J. had pointed out:

'The law does not.....prohibit the Court from passing sentence in respect of each offence established, but it declares that the offender must not receive for such offences collectively a punishment more severe than might have been awarded for any one of them, or for the offence formed by their combination.'

Mahmood, J. was of the view that the latest ruling of the Court on the subject was that of the case of 'Bisheshar (A)' and did not approve of the decision of Straight, J. in the case of 'Ram Partab' (J). Explaining the provisions of Section 71, he said at page 68 that the first part is illustrated by illustration (a) to the section and did not apply to the facts of the case because the offence of Section 170 is not any part of the offence of Section 383 or 384, that Section 71' does not refer to. matters of evidence, that even though the evidence in the case showed that but for personating as a public servant the accused could not practically have had the means of putting any person in fear of injury which is an essential element of extortion that circumstance did not bring the two offences within the purview of the third part of Section 71 and that the case was not governed at all by Section 71. The case of 'Bisheshar (A)' was treated as the ruling case in -- 'Emperor v. Dharam Das', 33 All 48 (S) decided by Tudball and Chamier, JJ. In that case there was a riot in the course of which the accused drove out the complainant from a field and caused grievous hurt; the accused were separately sentenced under Sections 147 and 325 read with 149 to imprisonment for six months and three months, the sentences being consecutive. Though it is not stated in the judgment whether one hurt was caused or more than one, the separate sentences were held to be valid and Section 71 was held to be inapplicable.

13. In -- 'Dharam Deo Singh v. Emperor', AIR 1916 All 49 (T) Walsh, J. upheld separate sentences under Sections 147 and 325 read with 149 when more than one injury was caused and the aggregate sentence was of six months. The learned Judge expressed dissent from -- 'Queen Empress v. Ram Partab', (J) because it failed to give effect to the whole meaning' of Section 71 and thought

that the matter was settled as far as this Court is concerned by the decision in the case of 'Bisheshar (A)'. It seems that Walsh, J. thought that the case was governed by the second or the third part of Section 71 and he laid down that all that is required under it is that the sentence ultimately passed should not exceed that provided for the offence of Section 325 (it is graver than the offence of Section 147).

14. A case under different sections, but involving the consideration of Section 71, was -- 'Mahomed All Khan v. Emperor : AIR1933 All438 where the accused was convicted and separately sentenced under Section 60 (a) and Section 60 (b) and (f) of the Excise Act. Young, J. stated at page 439:

'It seems to be unreasonable, when a man is found guilty of the major offence of illicitly manufacturing excisable articles, that he should also be severely punished for keeping in his possession materials for manufacturing those articles and for possessing them.'

He, therefore, set aside the separate sentence under Section 60 (b) and (f). It is not clear whether the learned Judge questioned the discretion of the Magistrate or the legality of the separate sentences. The use of the words 'unreasonable' and 'severely' suggests that he questioned merely his discretion and did not intend to lay down as a. matter of law that the accused should not have been sentenced separately. But he also quoted Section 71 though without saying how it applied to the facts of the case. The decision goes against the previous decisions and does not appear to lay down the correct law.

15. I have not come across a more recent case of this Court.

16. The Avadh Chief Court also took the view that separate sentences under Sections 147 and 325 read with 149 are legal. In -- 'Raghubar y. Emperor', (B) separate sentences were maintained regardless of the fact that more than, one injury was inflicted and of the question by whom grievous hurt was caused. In 'Parmeshwar v. Emperor a Division Bench adopted the reasoning of Sir George Knox in the case of 'Katwaru (G)'. Several injuries were caused and separate sentences under Sections 147 and 323 were maintained by Thomas C. J. and Ziaul Hasan, J.

The court adopted the view that the offence of Section 147 was completed as soon as the victim was knocked down on the ground and that the distinct offence of Section 323 was committed when he was beaten subsequently and that Section 71 did not apply. The court doubted the correctness of the view that separate sentences can be inflicted only on those persons who themselves cause hurt and are convicted under Section 323 without the help of Section 149. In -- 'Dulan Dayal Singh v. Emperor AIR 1945 Oudh 102 (W) Madeley, J. followed 'Raghubar's case', (B). This was the state of law in this Court and in the Chief Court of Avadh before the amalgamation. No case of this Court after the amalgamation, barring -- 'Abdur Rashid Khan v. State : AIR1953 All315 in which the question might have been discussed has been brought to my notice. In 'Abdur Rashid Khan's case', (X) Kidwai, J. held that separate sentences under Sections 147 and 323 read with Section 149 are illegal. My learned brother has relied simply upon -- 'Baldeo Singh v. Emperor', (C). No previous decisions of this Court or of the Avadh Chief Court were referred to my learned brother and I cannot help regretting that he was invited by counsel to decide the question only on the basis of -- Baldeo Singh v. Emperor', (C) and without regard to the decisions of this Court. My learned brother's view is that the punishment under Section 323 read with Section 149 depends upon the fact that the accused are members of an unlawful assembly and have 'committed a riot in the course of which someone or more of them caused simple injuries', and 'their conviction under Section 147 also depends upon those very facts', and that they cannot 'be punished twice over in respect of the facts which taken together constitute one offence'. Section 71 is not referred to in the judgment. If the decision is not based on that section, then I may respectfully point out that there is no other law prohibiting separate punishments for various offences.

I have already made it clear that there are no general principles, apart from what one finds in that section, which in any manner limit the power (and that power is nothing short of a duty) of a court to impose separate sentences for the various offences of which it convicts an accused in a trial. If my learned brother thought that the case was governed by the second or the third part of the section, he ought to have, but has not, held that it prohibits separate punishments and not merely aggregate punishment exceeding certain limits, before he could set aside the

separate punishments. That the punishment 'depends upon their being members of an unlawful assembly and their having committed a riot' is not correct; it depends only upon an injury or injuries being caused by any member. Of course a riot is simultaneously committed but its commission is not made a condition precedent or 'sine qua non' for the conviction under Section 323/149, I. P. C. Even if some facts are common to the offences of Sections 147 and 323 read with Section 149, I. P. C. it does not mean that separate punishments for the two offences cannot be inflicted. That a person should not be punished twice for one act is understandable but there does not appear any reason for saying that a man should not be punished separately for two offences merely because some ingredients or facts are common to both. Just because two offences have a common ingredient or fact, they do not always become one offence punishable only once. It a person kills another with an unlicensed gun, he commits two offences punishable under Section 302 I. P. C. and 19 (f), Arms Act; his separate punishments for the two are not barred just because the gun was used for committing both the offences. Similarly, if one causes grievous hurt to two persons with a lathi, punishing him separately for the two offences of Section 325 and Section 325 is not prohibited merely because the same lathi was used to cause the two grievous hurts. If A and B enter into a conspiracy to commit an offence and also commit that offence, they can certainly be punished separately for that offence and also for criminal conspiracy. A person, who commits a burglary with intent to commit theft and also commits theft, is separately punished under Sections 457 and 380 I. P. C. even though some of the ingredients are common.

Such a case is -- 'T.W. Morgan v. A.J. Devine', (1914) 59 Law Ed 1153 (Y) where two cumulative sentences for house-breaking and theft were inflicted; the Supreme Court of America held that the two offences were distinct, that one could be committed irrespective of whether it was necessary to commit the other or not, and that 'although the transaction may be in a sense continuous, the offences are separate and each complete in itself', (per Day, J. at page 1155). Similar decision was given in -- 'Kanchan Molla v. Emperor : AIR1925 Cal1015 . See also -- 'Batesar Singh v. Emperor', A. I. R. 1932 Pat 335(21).

17. Section 1 of the American Narcotic Act creates the offence of selling any forbidden drug except in or from the original stamped package, and Section 2 creates the offence of selling any forbidden drug not in pursuance of a written order of the person to whom it is sold. One Blockburger sold opium, which was a forbidden drug, without any written order of the purchaser and not in or from the original stamped package and was convicted under both Sections 1 and 2 and given consecutive sentences of five years' imprisonment and 2000 dollars for each offence. The Supreme Court held the sentences to be legal; -- 'H. Blockburger v. U. S. A.', (1931) 76 Law Ed 306 (Z 2). Sutherland, J. said, at page 309,

'each of the offences created requires proof of a different element. The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offences or only one, is whether each provision requires proof of an additional fact which the other does not'.

If one causes grievous hurt to two men in one transaction, he can be separately punished under Sections 325 and 325 I. P. C. If in a riot grievous hurt is caused to two persons, there is no reason why the members of the unlawful assembly should not be separately punished under Sections 325 and 325 read with Section 149 I. P. C. If it were said that they could be punished for only one offence of Section 325 I. P. C., it would mean that they would go unpunished for the other offence, in other words that once grievous hurt was caused to one man, grievous hurt could be caused to any number of men with impunity. If two separate punishments can be given, why should that case be distinguished from the one under consideration where the two offences are of Sections 147 and 325? If the reasoning employed in -- 'Abdur Rashid Khan's case', (X) were sound, it would apply there also.

One must not confuse an ingredient of an offence with the evidence required to substantiate the offence. Membership of an unlawful assembly is not an ingredient of the offence of Section 323; it is only a piece of evidence. If there is only one assailant, in order to convict him of the offence of Section 323 there must be evidence to the effect that he caused an injury. If there are five or more assailants, all the evidence that is required for the conviction of any one of them is that he

was a member of an unlawful assembly constituted by the five or more persons and that injury was caused in furtherance of its common object. In addition to Section 149 there is Section 34 I. P. C. under which one can be punished! for an act done by another. If a criminal act is done by two or more persons in furtherance of the common intention of all, each is liable for that act as if it were done by him alone; that is Section 34. 'The common object' required under Section 149, I. P. C. is a thing of wider scope than 'the common intention' required by Section 34. Section 149 will not apply unless there are at least five persons whereas for the applicability of Section 34 at least two persons only are required when there are five or more persons, less is required to make each of them liable for the act done by all of them; when there are less than five, more is required. What is included in 'the less' must necessarily be included in 'the more'.

Consequently a case that is governed by Section 149 would ordinarily always be governed by Section 34. If in a case Section 149 is found inapplicable because there are four, three or two men, one can always fall back upon Section 34 to make them, liable. A conviction recorded with the aid of Section 149 can always be recorded with the aid of Section 34. If in the present case the accused had been convicted under Section 147 and 325 read with Section 34 I. P. C. and separately sentenced for the two offences, I do not think the separate sentences could have been assailed as illegal. The argument on the basis of which the separate sentences were held to be illegal in -- 'Abdur Rashid Khan's case (X)', would not be applicable. If separate sentences could be legally awarded with the aid of Section 34 I do not understand why they cannot be legally awarded merely because instead of Section 34, Section 149 is used.

Whether separate sentences can be legally awarded or not should depend upon the facts and not upon the language one uses in describing the facts. If, on the facts, an accused is liable to be punished separately under Sections 147 and 325, it should not make any difference whether Section 34 or Section 149 is brought in aid. It is not even necessary under the law to mention either Section 34 or Section 149 in the charge. If neither Section is mentioned, one cannot assume that Section 149 was brought in aid and not the other section.

In -- 'Abdur Rashid Khan's case' (X) my learned brother set aside even the conviction under Section 323 read with Section 149. Even if an accused cannot be punished separately for the offences of Sections 147 arid 323 I. P. C., he can certainly be convicted under each of them. Even in those cases in which the separate sentences have been held to be illegal, the separate convictions have not been held to be illegal; see for instance, -- 'Nilmony Poddar v. Queen Empress', 16 Cal 442 (Z 3) -- 'Queen Empress v. Ram Partap', (J), -- 'Queen Empress v. Banna Punja', (F), -- 'Baldeo Singh v. Emperor', (C), -- 'Queen Empress v. Wazir Jan', (Q) -- 'Haji Lal Baksh v. Emperor', AIR 1943 Sind 212 (Z 4) and -- 'Parmeshwar v. Emperor', (V).

The legality of the separate convictions depends upon the Code of Criminal Procedure and Section 71 I. P. C. presupposes the existence of separate convictions. The question of separate punishments for various offences would not arise unless there were convictions for those offences. The view taken in -- 'Abdur Rashid Khan's case (X)', is, thus, not only against the view held by this Court and the Avadh Chief Court in the past but also, I say with great respect, not sound. As it has ignored the previous decisions of this Court, I cannot consider it as binding upon me; e. g.

-- 'Calcutta Motor Cycle Co. v. Union of India : AIR1953 Cal1 .

17a. Coming to the other High Courts the earliest important case that I have come across is that of -- 'Nilmony Podder' (Z 3). It was decided by a Full Bench of five Judges. The facts in that case were these: A riot was committed by six men, two of whom had themselves caused hurt with sharp-edged weapons. All were convicted under Sections 148 and 324 read with Section 149 I. P. C. and sentenced to three years' imprisonment under the , former section and one year's imprisonment under the latter section by a Sessions Judge. Four of the learned Judges thought that the case was governed by the first part of Section 71 and held the separate sentences illegal. Their argument was that the offence of Section 324 read with Section 149 committed by the other four members was made up of two parts, (1) of their being members of an unlawful assembly which had used force or violence, and (2) of the offence of causing hurt committed by two of the members. I respectfully differ from

the view that the offence was divisible into two parts like this and even if it were, I do not agree that the case was governed by the first part. Tottenham, J. dissented from the view of the four learned Judges. He pointed out that Section 149 does not punish any specific offence and that the four members are convicted of an offence punishable not under Section 149 but under Section 323.

18. In -- 'Banna Punja's case (F)', a Full Bench of the Bombay High Court laid down that it is not illegal to pass two sentences under Sections 147 and 326, provided the aggregate punishment does not exceed the maximum which the Court pan pass for either of them. Sargent C. J. pointed out that the combined effect of Section 71 I. P. C. and Section 235 Cr. P. C. is

'that the assessment of punishment is to be found in the former section in cases falling within it; but the latter determines the procedure quite independent of it, and this Court has already ruled that, in ;ase -of separate convictions for two distinct offences in the same case, the proper course is to pass a separate sentence for each offence'

(page 270). The Full Bench followed the case of -- 'Ram Swarup (M)'.

19. In -- 'Krishna Ayyar v. Emperor', AIR 1919 Mad. 353 (Z 6) a Bench of Madras High Court observed that it was well settled that where the object

'of an unlawful assembly is to cause hurt, a member of it cannot be convicted under Sections 147 and 323 etc. read with Section 149'.

No reasons are given and no authorities are cited in support of the view, and I respectfully disagree.

20. In -- 'Bishna v. Emperor', A. I. R. 1922 Lah. 405 (Z 7) a riot was committed by A, B and C and two others, in which A caused hurt to G with a sharp-edged weapon, B caused hurt to D with a sharp-edged weapon and C caused grievous hurt to D. A, B and C were convicted and sentenced under Section 147 to three months' imprisonment and they were in addition convicted and sentenced under Section 324 or Section 325 to a similar imprisonment. It was held by the Lahore High Court that because D was the first man to be attacked by B and C, the

offence of rioting was not completed until he was beaten, that consequently B and C could not be sentenced separately under Section 147 and that A, who inflicted injuries, subsequently could be separately sentenced I do not think any court has gone so far in any case. It is difficult to understand why the offence of rioting was not complete when the first blow was given to D & why even the second blow to hint was required to complete the offence of rioting A, B and C had done two distinct and separate acts, one of being members of an unlawful assembly and the other of causing injuries and there is no law which prevented their being punished separately for them.

21. In -- 'Kianuddin v. Emperor : AIR1924 Cal771 a Bench of Calcutta High Court held separate sentences under Sections 147 and 325 read with Section 149 I. P. C. to be illegal. The Bench had to follow the Full Bench decision in -- 'Nilmony Poddar's case (Z 3). The sentences were concurrent. Sanderson, C. J., observed that it made no difference to the legality or illegality. I respectfully agree with him that the legality or illegality of separate sentences does not depend upon whether they are concurrent or consecutive. Cuming J. who generally agreed with the learned Chief Justice says that the object of the first part of Section 71 could be achieved by making the sentences concurrent. Thus he was not prepared to hold that separate sentences are always illegal.

22. In -- 'Nga Son Min v. Emperor A. I. R. 1924 Rang 291 (Z9) the Rangoon High Court adopted the view taken in -- 'Bana Punja's case (F)', and held the separate sentences under Sections 147 and 325 read with Section 149 passed on the actual assailants valid. The view taken in this case is midway between the view that a member of an unlawful assembly who him-self causes grievous hurt can be punished separately under Sections 147 and 325, and the view that other members also can be separately punished. A member who himself inflicts grievous hurt can be convicted and sentenced separately under Section 325 without the aid of Section 149; but other assailants who cause only simple hurts either to the same victim or to another are certainly not guilty under Section 325 unless Section 149 is brought in aid. If they can be separately punished under Section 325, there is no reason why other members of the assembly who themselves have not caused any hurt should not be separately sentenced under

Section 325 read with Section 149 I. P. C. The distinction between the two is unwarranted.

23. 'Harendra Barman v. Emperor : AIR1931 Cal606 is another case from Calcutta; consecutive and concurrent sentences under Sections 147 and 325 read with Section 149 were imposed on nine persons. The Calcutta High Court set aside the sentence under Section 147 passed on some of them but maintained the sentence passed on the others who were said to have inflicted the blows which caused the death of the victim. It does not appear from the judgment whether there was evidence to prove that each of the others had himself caused the grievous hurt to the victim; if there was, Section 149 was not necessary for the conviction under Section 325; but if there was not, and I would be surprised if there was, they could not be convicted under Section 325 without the aid of Section 149, and if still the separate sentences were maintained, it only means that they are not at all illegal. Lort-Williams J. with whom S. K. Ghose J. agreed, though he felt bound by the decision in -- 'Nilmony Poddar's case (Z 3)', doubted its correctness.

24. Another case from Calcutta is -- 'Kitabdi v. Emperor : AIR1931 Cal450 where consecutive sentences were inflicted under Sections 147 and 304 read with Section 149 I. P. C.The sentence under Section 147 was set asidebecause the case could not be distinguishedfrom that of -- 'Nilmony Poddar (Z 3) and SirGeorge Rankin, C. J., and Sir Charu ChanderGhose, J. felt bound to follow it. Butthey also gave a notice of enhancementof sentence under Section 304. Thetwo consecutive sentences were of twoyears' imprisonment each. The learned ChiefJustice observed that the Sessions Judge couldhave inflicted a sentence of four years' imprisonment under Section 304 read with Section 149. Theobjection to the legality of separate sentencesis certainly of a technical nature; the bar onthe passing of separate sentences will preventtwo or more sentences being passed but maynot make any difference to the punishment orsuffering to be undergone by the convict. Ifseparate sentences are permitted, two years andtwo years may be given for the two offencesand the sentences may be made cumulative; butif they are not permitted, all that the Courthas to do is to give a sentence of four years'imprisonment for either of the offences.

25. In -- 'Anthony Udaynr's case (I)', the view taken was that if force in excess cf that required to constitute the offence of rioting is used, separate sentences can be inflicted. There, the offences under consideration were of Section 323, I. P. C. and Section 24 of the Cattle Trespass Act. Force was required for the commission of the latter offence, and hurt for the commission of the former offence. Wallace J. held that if after using force to commit the offence of Section 24 of the Cattle 'Trespass Act further force is used which causes pain, separate sentences for the two offences can be inflicted. Similar view was expressed by Davis, C. J. in -- 'Haji Lal Bakhsh v. Emperor', (Z 4).

26. In -- 'Kunnammal Mayan v. Emperor', AIR 1927 Mad. 970 (Z 12) the view taken in the case of -- 'Bishna (Z 7)', was accepted though not without a good deal of hesitation. A Division Bench composed of Beasley, C. J. and Bardswell, J. preferred the view of Wallace J. in 'Anthoni Udayar's case',, (I) to that of Curgenven J. in 'Kunnammal's case', (Z12) in 'Sothavalan v. Rama Kone', (H). There separate sentences under Sections 147 and 323 read with Section 149 were maintained and it was held that Section 71 had no application. The Court dissented from the view taken in the case of 'Bishna (Z7)'. The same Court in -- 'In re Ponniah Lopes', AIR 1934 Mad 388 (Z13) followed the case of 'Nilmony Poddar (Z3) and 'Kiamuddi (Z8)' and dissented from --'Queen Empress v. Bana Punja', (F). The Court held that the offence of Section 147 is included in the offence of Sections 323/149 and that to punish a person separately for them is to punish him twice. The Court further held that since the interpretation of Section 149 by the Judicial Committee in the case of 'Baren-dra Kumar Ghosh (E)' the view taken in the case of 'Bisheshar (A)' and the view taken by Tottenham J. in 'Nilmony Poddar's case', (Z3) cannot be accepted as correct. With respects, I do not know how the interpretation has at all affected that view. It was pointed out by Yorke J. in the case of 'Raghubar (B)' that it has not affected it at all. Section 71 says nothing about separate or distinct or specific offences.

27. The conclusions at which I have arrived are in conformity with the view that prevailed in this Court up to 1952. They militate against some decisions of other High Courts, particularly Calcutta, Nagpur & Lahore High Courts, but I respectfully differ from those decisions.

28. The applicants were rightly sentenced separately under the various sections. There is nothing illegal in the sentences. The application is dismissed.