

Har Prasad Vs. King-emperor

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Court : Allahabad

Decided On : Aug-12-1927

Reported in : AIR1928All139

Appellant : Har Prasad

Respondent : King-emperor

Judgement :

1. This was referred to a Bench of two Judges because of the argument raised at the hearing before a single Judge as to whether Sections 234, etc., were mutually exclusive of each other or could be jointly applied with a resultant increase in the number of offences tried at one trial. The two sections in this case, in regard to which discussion arose, were Sections 234 and 236; but in our view Section 236 has no application whatever to the particular case.

2. The accused here was committed to the Court of Session on a charge under Section 413, I.P. C, of being a habitual receiver of stolen property. Some ten or eleven instances of the receipt of stolen property were put forward by the Crown. At the trial the learned Sessions Judge thought it proper to add charges of three separate offences under Section 411. The three incidents which formed the subject of these charges were three of the ten or eleven incidents stated above to have been relied on by the Crown to establish the habit of receiving stolen property. Such difficulty as there may be in applying Section 236, whether by itself or in combination with another section, e.g., Section 234, turns really on the

question whether the doubt referred to in Section 236 is doubt owing to the absence of proof of some of the fact or facts, or doubt on a question of law. We do not say that this is really any serious difficulty, but it constitutes such difficulty as there is. In this case, there is no question of doubt either as to fact or as to law, and, therefore, no question of the applicability of Section 230 arises.

3. The situation here is simply this, that there was a charge of an offence under Section 413, I.P.C., which involved ten or eleven separate incidents of the receipt of stolen property, and several of those at any rate had to be proved before the charge could be established. Each of the incidents would really amount to a separate offence under Section 411, and each of the incidents would involve as its elements a finding that the property was stolen, that the accused was in possession of it and that there was jurisdiction for holding that he must have known it to be stolen property. The charges under Section 411 were only really charges as to three out of the ten or eleven incidents, and were found by the Judge not to constitute a sufficient basis for the finding of 'habit' necessary to a conviction under Section 413. The section really applicable is Section 238, according to which in such a case the accused could have been convicted under Section 411 as to the three minor offences, even though he had not been charged with them. A conviction of such minor offences' each of which was an ingredient of the major offence, is clearly not to be regarded as a conviction to which Section 233 is applicable. There has really only been a charge of a major offence constituted by a number of incidents, and three minor offences alone have been found to be proved, each of those minor offences being an ingredient of the major offence, the other ingredients of the major offence, viz., the other minor offences, having been found not proved. There is, therefore, no force in the legal objection taken that the accused was tried for more offences than could be joined in one trial.

4. For the reasons we have given, also no question of the power to apply Section 234, and any other of the cognate sections simultaneously arises.

5. The merits of the appeal were fully argued before the single Judge who is a member of this Bench, and it is conceded by counsel here that there is nothing

further to be said in favour of the appellants on the merits. The appeal is dismissed.

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