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Aziz Sheikh Vs. Emperor

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Court : Kolkata

Decided On : Mar-11-1913

Reported in : (1913)ILR40Cal631

Judge : Coxe and ;N.R. Chatterjee, JJ.

Appellant : Aziz Sheikh

Respondent : Emperor

Judgement :

Coxe and N.R. Chatterjee, JJ.

1. In this case the petitioners were sentenced to rigorous imprisonment for one month under Section 323 (or, in the case of Muhir Sheik, under Section 323 read with Section 114), to rigorous imprisonment for one month under Section 418, and to rigorous imprisonment for one month under Section 147. All these sentences were con-current. They appealed, and the Sessions Judge passed the following order:' Admit. Send for the records, issue notices. Bail allowed Rs. 100 each. Fix 5th October.' Then, during the vacation, the Vacation Judge heard the appeal and expressed himself as follows: 'It appears to me, therefore, that no appeal lies. As, however, the appeal was admitted by the Sessions Judge, I do not pass final orders. I do not know whether the appeal was admitted on a different view of the law, or by reason of the fact of the sentences being concurrent not being brought to the notice of the Judge. I, therefore, leave the case to be disposed of by him.'

On his return the Sessions Judge passed the following order: 'The judgment of the Additional Sessions Judge, so far as I am concerned, must be taken as final, in spite of his saying that it is left to me.'

2. It is argued that as the appeal was once admitted, it could not subsequently be held that no appeal lay. We cannot accept this contention. Even if there were any provision in the Criminal Procedure Code for admitting appeals, the mere fact of admission would not preclude the Court from dealing subsequently with the question whether an appeal lay.

3. The only question that really arises for determination is whether an accused, who has been sentenced to concurrent terms of imprisonment, not one of which is individually appealable, has a right of appeal against them collectively. It was held in Abdul Khalek v. King-Emperor (1912) 17 C. W. N. 72 that he has. We are t unable to accept this view. The learned Judges observe that under the rulings of this Court concurrent sentences, for the purpose of appeal, must be taken in the aggregate. We cannot trace these rulings, and in our opinion the aggregate of three concurrent equal sentences is the same thing as each of the sentences. In other words, if a man is sentenced three times over to be imprisoned for the month of March, 1913, the aggregate of his sentences is one month. From Sub-section (2) of the section it would seem that it is only in the case of consecutive sentences that the question of aggregate punishment can be said to arise. We are not, therefore, prepared to follow the decision in Abdul Khalek v. King-Emperor (1912) 17 C. W. N. 72 but we do not think that the matter need be referred, to a Full Bench, . as one of the learned Judges who decided it seems to have changed his opinion: vide Suknandan Singh v. King-Emperor (1912) 17 C. L. J. 392.

4. We think, therefore, that no appeal lay to the Sessions Judge, and the Rule accordingly fails and is discharged.

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