

Daitari Das Vs. Queen-empress

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Court : Kolkata

Decided On : Dec-06-1897

Reported in : (1898)ILR25Cal557

Judge : Banerjee and ;Hill, JJ.

Appellant : Daitari Das

Respondent : Queen-empress

Judgement :

Banerjee and Hill, JJ.

1. The appellant in this ease was tried before the Sessions Court of Cuttack on three charges under Section 409 of the Indian Penal Code for having committed criminal breach of trust as a public servant in respect of three different sums of money.

2. The learned Sessions Judge, agreeing with the assessors, has found the accused guilty on all the three charges, and has sentenced him under Section 409 of the Indian Penal Code to seven years' rigorous imprisonment on each charge, with this qualification that the sentences are to run concurrently. We see no reason to interfere with the conviction; but in regard to the sentence, we are of opinion that it is not warranted by law. There is no provision in the Code of Criminal Procedure, or in any other law that we are aware of, authorizing a Court to pass

sentences which are to run concurrently. On the contrary, Section 35 of the Code of Criminal Procedure enacts that ' when a person is convicted at one trial of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor, which such Court is competent to inflict, such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.'

3. [559] We may also refer to the case of Queen-Empress v. Wazir Jan (1887) L.L.R 10 All. 58 which goes to support the same view. That being so, the concurrent sentences passed in this case must be set aside.

4. The question then arises what should be the proper sentence in the case? We see no reason to dissent from the learned Sessions Judge's view that an aggregate sentence of seven years' rigorous imprisonment is required for the ends of justice; and our order, therefore, will be this-that the appellant be sentenced to five years' rigorous imprisonment in respect of the first count, one year's rigorous imprisonment in respect of the second charge, and one year's rigorous imprisonment in respect of the third, for the offences of criminal breach of trust as a public servant punishable under Section 409 of the Indian Penal Code. Such sentences to run the one after the other in the order in which they have been mentioned above.