

REG. v. SHANKAR VENKA'JI' and another.

Crim. Proc. Code, Sec. 411—Appeal.

Held that no appeal lies, where the sentence of imprisonment and of further imprisonment in default of payment of a fine does not, in the aggregate, exceed the term of one month.

THIS was an application under Sec. 404 of the Code. The prisoners were convicted of rioting by a Magistrate F. P. in the Dhárwár District; and sentenced each to suffer simple imprisonment for a period of fifteen days, and to pay a fine of Rs. 25, or in default to suffer imprisonment for a further period of fifteen days.

1866.
December 19.

The Session Judge held that, under Sec. 411 of the Code of Criminal Procedure, an appeal would not lie.

Ganpatráv Bháskar, for the prisoner, referred to a decision of the Agra Śádr Court (1st September 1863) cited in Prinsep's edition of the Code of Criminal Procedure, in which it was laid down that "If a sentence of imprisonment *and* fine be passed, although both sentences be within the limits specified in Sec. 411, there will be an appeal; but the fact that imprisonment is awarded in default of payment of fine will not alone give a right of appeal."

COUCH, C.J.:—Sec. 411 cannot be construed to mean that an appeal lies in all cases in which a combined sentence of fine and imprisonment is passed: for it is absurd to suppose it was intended that an appeal should lie when a prisoner was sentenced to suffer imprisonment for one day, and to pay a fine of one rupee, but not where he was sentenced to suffer imprisonment for twenty-nine days:

In the particular case of the Agra Court cited it may be that the imprisonment would in the aggregate have amounted to more than a month; but in the present case it could not exceed that term, and, therefore, I am of opinion that no appeal lies.

NEWTON and WARDEN concurred.

Petition rejected.