

has thereby committed an offence punishable under Sec. 328 of the Indian Penal Code; and the Court directs that the said Dhaniá suffer simple imprisonment for two months."

The case was heard this day before NEWTON and TUCKER, JJ.

Nanábhái Haridás for the petitioner.

Dhiraílál Mathurádás for the prosecution.

PER CURIAM:—We are of opinion that Sec. 328 of the Indian Penal Code applies to this case. It says that whoever causes to be taken by any person any poison &c. knowing it to be likely that he will thereby cause hurt, shall be punished, &c. In order to meet this definition it is not necessary that the hurt should be caused to any particular person intended, or that the person injured or likely to be injured should have been previously known. The accused, with the object of punishing or detecting the stealers of his toddy, mixed a poisonous drug with it, supposing that they might drink it, and he must have known it to be likely that it might be drunk by others, and that they would suffer in consequence. We consider, therefore, that he "caused it to be taken," within the meaning of the section. The case does not come within the provisions of Sec. 81 of the Indian Penal Code, which applies only to acts done without any criminal intention to cause harm.

We must reject the petition.

Petition rejected.

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July 30.

Imprisonment in default of payment of fine—Ind. Pen. Code, Secs. 40 and 65—Crim. Proc. Code, Sec. 45—Salt Revenue Act (XXXI. of 1850), Sec. 3.

Sec. 45 of the Criminal Procedure Code makes applicable the provisions of Sec. 65 of the Indian Penal Code not only to offences falling under that Code as defined in its 40th section, but to every case in which a Magistrate has jurisdiction under Sec. 21 of the Criminal Procedure Code.

Imprisonment for one month awarded in default of payment of a fine under Sec. 3 of the Salt Revenue Act (XXXI. of 1850) was accordingly reduced to three weeks' simple imprisonment.

THIS was a case referred for the orders of the High Court by J. Elphinston, Acting Magistrate of the District of Cánará, with the following remarks:—

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“In a case disposed of by the 1st Class Subordinate Magistrate at Karwár in this collectorate, in the month of April 1868, the accused was found guilty under Sec. 3 of Act XXXI. of 1850, and sentenced to pay a fine of ten rupees; or in default of payment to suffer one month’s simple imprisonment.

“The punishment prescribed for the offence of which the accused was convicted by the Subordinate Magistrate under the above section is three months’ imprisonment, and the award of one month’s imprisonment in default of payment of the fine ordered is apparently contrary to the provisions of Sec. 65 of the Indian Penal Code, being in excess of one-fourth of the term of imprisonment prescribed for the offence.

“The Subordinate Magistrate was, therefore, called upon to state how it was that the provisions of Sec. 65 of the Indian Penal Code were not attended to by him, in respect to this case, and he replies ‘that the provisions of Sec. 65 of the Indian Penal Code are applicable only to offences falling under that Code, as defined in its 40th section; that the present case is not one which falls under the Penal Code, and that, therefore, he was guided by the provisions of Sec. 45 of the Code of Criminal Procedure in deciding the punishment in default of the payment of the fine, under the authority contained in Secs. 21 and 444 of the Criminal Procedure Code.’

“I do not agree with the views of the Sub-Magistrate in thinking that the provisions of Sec. 65 of the Indian Penal Code are not applicable to the case under notice, my reason being that this section is also quoted as a guide to procedure in Sec. 45 of the Criminal Procedure Code, which the Subordinate Magistrate states that he followed in disposing of this case.”

PER CURIAM (NEWTON and TUCKER, JJ.) :—The Court is of opinion that Sec. 45 of the Code of Criminal Procedure makes applicable the provisions of Sec. 65 of the Indian Penal Code to every case in which a Magistrate has jurisdiction under Sec. 21 of the Code of Criminal Procedure.

The Court reduces the imprisonment awarded in default of payment of fine to three weeks’ simple imprisonment.