

REG. V. LALLU KÁRWA'R.

1868.
July 30.

Fine—Immoveable Property— Ind. Pen. Code, Sec. 70—Crim. Proc. Code, Sec. 61.

On a reference as to whether the restriction for the recovery of fines to moveable property (Crim. Proc. Code, Sec. 61) applied only during the lifetime of the offender, and whether the fine could after his death be recovered, under Sec. 70 of the Indian Penal Code, from his immoveable property, the Court was of opinion that the law had only provided for the distress and sale of moveable property, and that there was no way in which immoveable property could be made liable.

THIS was a case referred for the orders of the Court by G. W. Elliot, Acting Magistrate of the Khedá District, to whom the following reference had been made by M. H. Scott, Magistrate F. P., under date the 17th of April 1868:—

“One Lallu Kárwár was fined twenty rupees, on the 11th of December 1865, by G. H. Johns, Magistrate F. P., and a warrant was issued under Sec. 61 of the Criminal Procedure Code. The individual died a short time since, leaving some immoveable but no moveable property. A portion only of the fine has been paid.

“By Sec. 70 of the Indian Penal Code, the death of an offender does not discharge his property from liability; but Sec. 61 of the Criminal Procedure Code points only to moveable property, while the wording of Sec. 70 of the Indian Penal Code is ‘any property.’

“The Calcutta High Court has ruled that the restriction as to moveable property applies only during the lifetime of the offender, but that after his death within six years from the passing of the sentence, the fine may, under Sec. 70 of the Penal Code, be recovered from any property which may be legally liable for his debts (a).

“Should you have on record any decision on this point, I shall feel obliged by your communicating it to me; if not, I have the honour to request that this matter may be referred to Government, with a view to a decision on the point.”

(a) *Vide* Prinsep's notes to Sec. 61 of the Code of Criminal Procedure.

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PER CURIAM (NEWTON and TUCKER, JJ.) :—The law has provided for the distress and sale of moveable property only, and the Court cannot point out any way by which the immoveable property may be made liable to pay the fine. Under these circumstances, the Court considers that the immoveable property should not be proceeded against after the death of the offender.

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REG. V. LALLUBHA'I JASSUBHA'I.

Dispensing with Personal Attendance of Accused—Recognisance Bond—Agent—Crim. Proc. Code, Secs. 182, 258, and 261.

Held, that where the personal attendance of an accused is dispensed with, a recognisance bond, if such is deemed necessary, should be taken from him, and not from his agent, binding him (the accused) to appear, either in person or by an agent; and that a Magistrate has no legal authority to secure the attendance of an agent by such a bond.

THE papers and proceedings in this case were sent for by the Court, under Sec. 404 of the Code of Criminal Procedure.

The facts of the case are these :—Ahmad Alli Imám Haidarbakhsh and others were accused of breaking the padlock of a *cháurá* and taking possession of the same, together with that of the village of Issanpúr. The petitioner, Lallubháí, presented a petition to the trying Magistrate, Kúvarji Kavasji, praying that the personal attendance of the accused Ahmad Alli might be dispensed with, and he, the petitioner, allowed to represent, and answer the complaint preferred against, the accused. The application was granted under Sec. 182 of the Code of Criminal Procedure; and, in order to ensure his attendance during the inquiry into the complaint, a recognisance bond in the sum of Rs. 100 was taken from him, in the same manner as one would have been taken, under Sec. 258 of the Code of Criminal Procedure, from the accused Ahmad Alli. The petitioner, however, having failed to appear at the hearing of the case, the Magistrate ordered the recognisance bond to be enforced. Upon this the petitioner presented a petition to A. L. Spens, Session Judge of Ahmedábád, but he rejected it with the following remarks :—