

1917.

ISABALI
TAYABALI
v.
MAHADU
EKODA.

contains elaborate provisions declaring that such forfeiture shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the breach and requiring the lessee to remedy it or make compensation, and the lessee fails within a reasonable time either to remedy the breach or to compensate for it. But the Indian Act contains nothing of these restrictions on the enforcement of the forfeiture, and it must be inferred that no such restrictions were intended by the Legislature. It is hardly necessary to add that the Act does empower the Court—see section 114—to relieve against forfeiture for non-payment of rent in certain circumstances, but with these circumstances we are not now concerned.

For these reasons I am of opinion that the question raised in this appeal must be answered in favour of the plaintiff, the lessor. The lower Court's order remitting the suit for decision on its merits must, therefore, be affirmed, this appeal being dismissed with costs.

SCOTT, C. J. :—I am of the same opinion.

Order affirmed.

J. G. R.*

CRIMINAL APPELLATE.

Before Mr. Justice Heaton and Mr. Justice Shah.

EMPEROR v. MARI PARSU.*

1917.

November 22.

Criminal Procedure Code (Act V of 1898), section 369—Trial completed and sentence passed for offence under section 379 of the Indian Penal Code—Trial continued on another charge under sections 75 and 379 of the Indian Penal Code in the same case—Further trial is bad.

The accused was committed to a Court of Session on two charges, one under section 379, and another under sections 75 and 379 of the Indian Penal

* Criminal Appeal No. 436 of 1917.

Code. The trial went on the first charge and ended in conviction and sentence. The second charge was next taken up in the same trial and a sentence was passed on the accused again. The accused having appealed :

Held, that the subsequent proceedings on the second charge were not valid and should be set aside for when the judgment including the sentence was pronounced in the trial on the first charge, there was no power under section 369 of the Criminal Procedure Code to alter or review the same.

THIS was an appeal from conviction and sentence passed by J. A. Saldanha, Assistant Judge of Thana.

The accused was tried on a charge for an offence punishable under section 379 of the Indian Penal Code. He was also charged with previous convictions of theft (sections 75 and 379 of the Indian Penal Code). The charge of theft was first gone into : the accused was found guilty and sentenced on the 23rd August 1917 to rigorous imprisonment for three years.

On the same day, a couple of hours later but before the warrants were signed the second charge about previous convictions was read out and the case proceeded with against the accused. The previous convictions were held proved and the accused was sentenced to rigorous imprisonment for seven years on the 31st August 1917.

The accused appealed to the High Court contending that the enhanced sentence passed upon him was not legal.

There was no appearance for the accused.

S. S. Patkar, Government Pleader, for the Crown.

SHAH, J.:—In this case the accused was charged under section 379 of the Indian Penal Code and tried by the Assistant Sessions Judge of Thana and a Jury. The Jury found the accused guilty. The Judge accepted the verdict and proceeded to pass a sentence in respect of that charge, and sentenced the accused to three years' rigorous imprisonment on the 23rd August. There was, however, a charge against the accused under section 75

1917,

 EMPEROR
 v.
 MARI PARSU

1917.

EMPEROR
v.
MARI PARSU.

read with section 379 of the Indian Penal Code, which, for reasons not material for our present purposes, was not proceeded with before passing the sentence on the charge under section 379, Indian Penal Code. The trial practically ended when the sentence was passed in respect of the offence under section 379. The learned Judge, however, proceeded thereafter to try the accused, and to record evidence, with respect to the charge of previous convictions. The Jury found the accused guilty on that charge on the 31st of August and the learned Judge sentenced the accused to seven years' rigorous imprisonment. It is against this order of conviction and sentence that the present appeal is preferred.

The point that arises in appeal is whether the subsequent proceedings with reference to the charge under section 75 are valid. In my opinion they are not valid, because under section 369 of the Criminal Procedure Code after the judgment including the sentence was pronounced in the trial on the 23rd of August there was no power to alter or review the same. It seems to me that after the verdict of the Jury was accepted and the sentence passed on the 23rd of August on the charge under section 379, the trial came to an end. Whatever may have been the reasons for sentencing the accused under section 379, Indian Penal Code, in the first instance, and thereafter proceeding with the charge under section 75, the subsequent proceedings cannot be treated as valid.

I would, therefore, set aside the order made by the Assistant Sessions Judge on the 31st of August and restore that made on the 23rd of August. The result will be that the accused will have to suffer rigorous imprisonment for three years.

HEATON, J. :—I concur.

Order set aside.

R. B.