

A

A.K. MALLU

v.

PURANACHANDRA RAO & ANR.

December 16, 1966

B [M. HIDAYATULLAH, V. BHARGAVA AND G. K. MITTER, JJ.]

*Code of Criminal Procedure (Act 5 of 1898), s. 562(1-A)—If applies only to offences relating to property.*

The accused was convicted of the offence of wrongful confinement under s. 342 I.P.C., and was released after due admonition under s. 562(1-A), Criminal Procedure Code.

C

On the question whether the latter section is concerned only with offences relating to property and was therefore not applicable in the present case,

D

HELD : The clause "any offence under the Indian Penal Code punishable with not more than two years' imprisonment" in s. 562(1-A) Cr.P.C., stands by itself and indicates that all offences punishable with not more than two years' imprisonment are capable of being dealt with under the section. The words "any offence under the Indian Penal Code" cannot be read *ejusdem generis* with the offences of theft etc. mentioned earlier in the section. Those offences had to be specifically mentioned so as to be included in the section, because, they are offences punishable with imprisonment of more than two years. [310 G-H]

E

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 65 and 243 of 1964.

Appeals by special leave from the judgment and order dated September 18, 1963 of the Andhra Pradesh High Court in Criminal Appeal No. 385 of 1962.

F

S. C. Agarwala, for the appellant (in Cr. A. No. 65/64) and respondent No. 2 (in Cr. A. No. 243/64).

K. R. Chaudhuri, for the appellant (in Cr. A. No. 243/64) and respondent No. 1 (in Cr. A. No. 65/64).

T.V.R. Tatachari, for respondent No. 2 (in Cr. A. No. 65/64) and respondent No. 1 (in Cr. A. No. 243/64).

G

The Judgment of the Court was delivered by

H

Hidayatullah, J. These are two appeals, one (Criminal Appeal No. 243 of 1964) by one Purna Chandra Rao who has been convicted under s. 342, Indian Penal Code by the High Court of Andhra Pradesh but in lieu of the sentence the High Court released him under s. 562(1-A) of the Criminal Procedure Code after due admonition, and the other (Criminal Appeal No. 65 of 1964) by one A. K. Mallu against the judgment of the Andhra Pradesh High Court releasing the respondent (who is the appellant

in the other appeal) after admonition under s. 562 (1-A) of the Code of Criminal Procedure. The two appeals have been respectively filed by the complainant who had lodged a complaint against him on which the conviction resulted, and by the accused. In so far as the appeal of the accused is concerned, we have recorded an order separately which shows that Mr. K. R. Chaudhary, advocate of this Court appeared before us and told us that he would like to withdraw from the case. As the accused is not represented before us, there is no alternative but to dismiss his appeal in default.

As regards the other appeal, Mr. S. C. Aggarwal contends that s. 562 (1-A) is not applicable to an offence under s. 342 of the Indian Penal Code. His reasons are: that s. 562 (1-A) is concerned with offences concerning property and offences not so concerned cannot be subjected to treatment under that section. Section 562 (1-A) reads as follows:—

“In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code punishable with not more than two years’ imprisonment and no previous conviction is proved against him the Court before whom he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.”

Mr. Aggarwala contends that the Code has mentioned several offences by description, such as theft, theft in building, dishonest misappropriation and cheating which are offences connected with property and, therefore, words “any offence under the Indian Penal Code” which follow, must be given an interpretation confining them to those sections of the Penal Code where property is either directly or indirectly involved. In our opinion, this submission is not correct and Mr. Aggarwala is not right in reading the section as he contends. The offences which are earlier mentioned in the section are punishable with imprisonment of more than two years and, therefore, it was necessary to mention them so as to include them in addition to offences under the Indian Penal Code punishable with not more than two years’ imprisonment. The words “any offence under the Indian Penal Code” therefore cannot be read *ejusdem generis* with the offences which are mentioned earlier. This clause stands by itself and indicates that all offences punishable with not more than two years’ imprisonment are also capable of

**A** being dealt with under s. 562 (1-A). Offences against property are all included in Ch. 17 of the Indian Penal Code and if it was desired to limit the operation of s. 562(1-A) to offences against property, it would have been the easiest thing to have mentioned the Seventeenth Chapter of the Code. For these reasons, we do not accept the argument.

**B** As a result, both the appeals fail and are dismissed.

V.P.S.

*Appeals dismissed.*