

## CRIMINAL REVISION.

Before C. C. Ghose, Mukerji and Graham JJ.

PRAMATHA NATH BASU

1929.

Jan. 11.

v.

GANGA CHARAN CHAKRAVARTI.\*

*Enhancement of sentence—Sentence, whether High Court can and should enhance on application of private complainant—Private complainant, whether can be heard in support of a Rule for enhancement of the sentence.*

*Per Curiam (MUKHERJI J. dissentiente).* The High Court can interfere and enhance the sentence on the application of a private complainant or on its own motion. The powers of the High Court are extremely wide, but must be exercised cautiously.

A private complainant on whose application a Rule for enhancement of the sentence is issued can be heard in support of such Rule, even if the Crown does not move in the matter.

*Per MUKERJI J.* The High Court has the power, but should not enhance a sentence on the application of a private complainant. There is nothing to prevent a Rule being issued on the application of the complainant, but, beyond this, the private complainant has no place in the proceedings, and, unless the Crown takes up the matter and proceeds with it, the Rule should be discharged.

*In re Nagji Dula (1) and Emperor v. Shamji Ramchandra Gujar (2)* followed.

RULE obtained by Pramatha Nath Basu, the complainant.

The accused, Ganga Charan Chakravarti, was the *mofussil naib* of a *zemindar* and, amongst other duties, had to realise rents due from the tenants, grant them rent receipts, make entries in the collection papers and remit the amounts collected to the *sadar kachari*, of which the complainant was the *naib* in charge. Defalcations of a large sum, having been detected, in the amounts realised by the accused, the *zemindar* gave directions to the complainant to prosecute the accused and the former started a case of

\*Criminal Revision, No. 986 of 1928, against the order of R. C. Sen, Sessions Judge of Jessore, dated Aug. 21, 1928.

(1) (1924) I. L. R. 48 Bom. 358.

(2) (1914) 16 Bom. L. R. 202.

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criminal misappropriation and falsification of accounts against the latter on a petition of complaint. The Magistrate, who tried the case, framed a charge against the accused under section 408 of the Indian Penal Code in respect of a sum of Rs. 228-11-6 v. and, on conviction, sentenced him to simple imprisonment till the rising of the court and a fine of Rs. 500, in default to 3 months' rigorous imprisonment. On appeal, by the accused, the Sessions Judge upheld the conviction, but reduced the sentence of fine to Rs. 200. The complainant, thereupon, moved the High Court for enhancement of the sentence and obtained a Rule, which came up for hearing before Mukerji and Graham JJ., who differed in opinion. Their Lordships delivered the following dissentient judgments:—

MUKERJI J: This Rule has been issued, at the instance of the complainant, in a case under section 408 of the Indian Penal Code, to show cause why the sentence passed on the accused should not be enhanced.

The trial magistrate sentenced the accused to simple imprisonment till the rising of the court and to a fine of Rs. 500, in default to 3 months' rigorous imprisonment. The Sessions Judge has, on appeal, reduced the sentence of fine to one of Rs. 200, in default to a similar period of rigorous imprisonment. But the courts below have passed the aforesaid sentences with a certain amount of deliberation, as each of them has given some reasons for the sentence that it considered it necessary to pass. Whether the sentence, as it now stands, is adequate or disproportionate, or whether the reasons given by the courts below are sound or not, are matters on which I shall express no opinion, for we have not yet heard the accused, as he is entitled to be heard, under the sixth sub-section of section 439, Criminal Procedure Code. I think the Rule should be discharged on certain preliminary grounds.

That the High Court acting in revision has power to enhance the sentence is a proposition that can hardly be disputed; indeed it is the High Court alone which has got this power. The question is whether it should do so at the instance of a private complainant.

This question is really divided into two parts: 1st, Has the High Court power to enhance a sentence on the application of a private complainant; 2nd, Should the High Court exercise this power on such an application? As regards the first of these questions, it cannot be disputed that the power may be exercised by the High Court in whatever way the matter may come to its notice; it may take action of its own motion, or, on being moved by any body, even a man in the street. The second question is entirely different from the first and my answer to that is a clear negative, provided that the application is not backed by the Crown. As far as I am aware, that is the settled practice of this Court, which, even though it may have been departed from on one or two rare occasions, of which again I have no personal knowledge, should not be knowingly abandoned.

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Rules for enhancement of sentence have often been issued by this Court on perusal of Sessions statements and there is no conceivable reason why, when the private complainant brings the matter to the notice of the Court, the Court should consider itself precluded from taking action. It cannot, therefore, be said that the private complainant has no *locus standi* to bring to the notice of the Court a case of grossly inadequate sentence which deserves to be enhanced. There is again nothing to prevent a Rule for enhancement of sentence being issued on such an application. But beyond this, the private complainant, in my judgment has no place, in the proceedings, and unless the Crown takes up the matter and proceeds with it, the Rule should be discharged. What I have said above necessarily leads to the position that the private complainant's proper course is to approach the Government, because if the Government takes the matter up he need not move further and if the Government refused to do so, it is no use his getting a Rule which is to be eventually discharged. This, I understand, is the reason of the practice under which applications of this character by private complainants are altogether discouraged and scarcely entertained. This also appears to be the practice as far as the Bombay High Court is concerned. *In re Nagji Dula* (1), it was said that it should be definitely ruled that the private complainant is not entitled to apply for enhancement of sentence and in *Emperor v. Shamji Ramchandra Gujar* (2), in which a Rule was issued for enhancement of sentence, but it was eventually discharged, the Court observing that enhancement of sentence is a very serious proceeding and where there is a proposal to that effect, it ought, if it is a sound proposal, to be supported by the Government Pleader under instructions which would enable him to put before the Court cogent reasons why there should be enhancement of sentence.

The District Magistrate had notice of this Rule and the Crown has not thought fit to support it. I would, therefore, discharge the Rule.

GRAHAM J: The Rule was issued in this case to show cause why the sentence passed on the accused should not be enhanced.

The facts are shortly these:—

The accused Ganga Charan Chakravarti was *naib* of a *zemindar*, and was prosecuted under section 408 of the Indian Penal Code in respect of certain defalcations amounting to a total sum of Rs. 228-11-6. He was found guilty and sentenced to simple imprisonment till the rising of the court and to a fine of Rs. 500, in default to 3 months' rigorous imprisonment. On appeal, the sentence was reduced to a fine of Rs. 200 only. Both these sentences are manifestly inadequate for an offence of this description, especially in view of the fact that the defalcations were greatly in excess of the items in respect of which charges were framed. The question is whether we ought to interfere. It has not ordinarily been the practice of this Court to enhance sentences on an application made by a private party. In my opinion, however, we ought not to allow our discretion to be fettered by any rule of practice, and in a fit case, when it is shown that there has been a manifest miscarriage of justice, we ought I think, to interfere, even where the facts are brought to our notice through a private agency instead of by the Crown or through a report submitted by the District Magistrate. It seems to me that this is one of those exceptional cases. The sentence is clearly inadequate, and, if allowed to stand, can only have the effect of encouraging the commission of

(1) (1924) I. L. R. 48 Bom. 358. (2) (1914) 16 Bom. J. R. 202.

such offences. I would, therefore, as we have not yet heard the accused under sub-section (6) of section 439, Criminal Procedure Code, give him an opportunity of showing cause against the conviction, and, if he fails, therein would make the Rule absolute and enhance the sentence.

The case was then referred to Mr. Justice C. C. Ghose.

*Mr. Narendrakumar Basu* and *Mr. Manindrakumar Basu*, for the petitioner.

*Mr. S. R. Das Gupta* and *Mr. Kshitishchandra Ghatak*, for the opposite party.

GHOSE J. I have examined the record in this case and have perused with attention the opinions of the differing Judges. As far as I know, the practice of this Court has been not to interfere on petitions of private complainants praying for enhancement of the sentence passed on the accused. It will not be understood from what I have just said that the High Court has not the power to interfere on the application of a private complainant. The powers of the High Court are extremely wide. But it is an elementary proposition that the wider the power the more cautious must be the exercise of that power and, in the cautious exercise of that power, it has been laid down by eminent Judges from time to time that it is a safe working rule not to interfere on petitions for enhancement of sentences passed on accused persons made on behalf of private complainants. But the position in this case is this : the present application is not for the issue of a Rule calling upon the accused to show cause why the sentences should not be enhanced. A Rule has been issued by the High Court. It is not for me to say whether the Rule should have been issued or not. It is sufficient for me to take note of the fact that a Rule has been issued and it is, therefore, my obvious duty to go into the facts and ascertain for myself whether, in the circumstances of the case, the sentence should be enhanced. That is the sole duty which is before me at the present moment. Now, on that point. I cannot help saying that, in the circumstances of the

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particular case, the sentence of fine imposed by the trial Court should not have been reduced by the Sessions Judge. Mr. Das Gupta, who appears on behalf of the accused, states that, inasmuch as the High Court does not ordinarily interfere on the application of a private complainant, I should not interfere on this occasion with the order passed by the Sessions Judge. As indicated above, much of the importance which would otherwise have attached to Mr. Das Gupta's contention has been lessened by reason of the issue of the Rule by my learned brothers, Mr. Justice Costello and Mr. Justice Lort-Williams. As I said a few moments ago, the High Court can interfere on the application of a private complainant; but it does not ordinarily so interfere. The High Court, for the matter of that, can interfere of its own motion. But having regard to the fact that the Rule was issued by the High Court, while I am not unmindful of what has been contended before me, it is my obvious duty to look into the record for myself and come to the conclusion as to whether or not the sentence should be enhanced. I am of opinion that the sentence imposed by the trial court should not have been reduced and, in that view of the matter, I enhance the sentence of fine passed on the accused from Rs. 200 to Rs. 500 and, in default of payment direct the accused to suffer rigorous imprisonment for a period of three months.

*Rule made absolute.*

A.A.