

CRIMINAL REVISION.

Before Cunliffe and Henderson J.J.

MADAN MOHAN RAY

v.

EMPEROR.*

1936

Feb. 19.

Revision—Sentence passed by a Special Magistrate, if can be revised—Bengal Suppression of Terrorist Outrages (Supplementary) Act (XXIV of 1932), s. 5—Government of India Act, 1919 (9 & 10 Geo. V., c 101), s. 107.

Conviction and sentence passed by a Special Magistrate under the Bengal Suppression of Terrorist Outrages Act cannot be revised by the High Court under s. 439 of the Code of Criminal Procedure.

A legal sentence passed by such Magistrate cannot be revised under s. 107 of the Government of India Act.

Superintendent and Remembrancer of Legal Affairs, Bengal v. Lachhminarayan Sarma (1) referred to.

CRIMINAL REVISION.

The material facts and arguments appear from the judgment.

J. C. Gupta and *Manmatha Nath Das* for the petitioners.

The Officiating Deputy Legal Remembrancer, Debendra Narayan Bhattacharjya, for the Crown.

CUNLIFFE J. The petitioner in this case was sentenced to rigorous imprisonment for one year under s. 36 of the Bengal Suppression of Terrorist Outrages Act, 1932. He made an application before my brothers Lort-Williams and Jack J.J., our predecessors in this Court, and obtained a Rule *nisi*

*Criminal Revision, No. 83 of 1936, against the order of S. K. Haldar, Sessions Judge of Midnapore, dated Dec. 21, 1935, modifying the order of B. Bagchi, Special Magistrate of Midnapore, dated Dec. 3, 1935.

upon the local District Magistrate to show cause why the sentence to which I have referred should not be reduced or modified in some way or another. Before us now Mr. Gupta appears on his behalf and asks for the Rule to be made absolute.

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The Bengal Suppression of Terrorist Outrages Act of 1932 must be read with a supplementary Act which contains various definitions and directions with regard to appeals and so on. Section 5 of the Supplementary Act is in these terms :—

Notwithstanding the provisions of the Code, or of any other law for the time being in force, or of anything having the force of law, there shall, save as provided in the local Act as supplemented by this Act, be no appeal from any order or sentence passed by a Special Magistrate under the local Act and save as aforesaid no Court shall have authority to revise such order or sentence, or to transfer any case from any such Magistrate or to make any order under s. 491 of the Code.

The conviction, as I have already shown, was passed by a Special Magistrate under this local Act and the provisions of the Supplementary Imperial Act have already been considered by my brothers Lord-Williams and Henderson JJ. in the case *Superintendent and Remembrancer of Legal Affairs, Bengal v. Lachhminarayan Sarma* (1). In that case the Local Government endeavoured to appeal from an acquittal passed by a special power Magistrate appointed under the Terrorist Act and in spite of the arguments for the Crown, it was held that an appeal was incompetent by reason of the very s. 5 of the Imperial Act which I have just read. It is difficult to understand how this Rule *nisi* was ever issued, but faced with the difficulty, Mr. Gupta fell back on an application to amend his petition which was put forward in the regular way under s. 439 of the Code, the section that deals with review applications, to an application under s. 107 of the Government of India Act. That section of the Act which refers to the powers of the High Courts is usually known as the superintendence section and Mr. Gupta contended that the right of the Indian Chartered High

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Courts under the section in question must extend to overriding the specific provisions of special legislation both, I suppose, local and Imperial, the argument being based upon the supposition that the section in giving the High Court's superintending power over the lower Courts or all Courts subordinate to its appellate jurisdiction embraced the reduction of sentences passed by Special Magistrate when the statutory law specifically denies any redress from such decisions. It is to be noted that if such an interpretation could be placed upon s. 107 it could certainly be invoked by the Crown against the subject. Indeed, in the case of *Superintendent and Remembrancer of Legal Affairs, Bengal v. Lachminarayan Sarma* (1), referred to above, it was the Crown that was endeavouring to appeal from an order of acquittal by the Special Magistrate, although they did not go so far as to put their application in this form. We regret we are unable to accept Mr. Gupta's application for amendment. We think the consideration of any alteration in sentence in this case is clearly illegal for the reasons I have set out in the judgment.

HENDERSON J. I agree. In view of the provisions of s. 5 of Act XXIV of 1932, the Rule was incompetent and I am certainly not prepared to say that, under the provisions of s. 107 of the Government of India Act, we ought to interfere with what was admittedly a perfectly legal sentence.

Rule discharged.

A. C. R. C.

(1) (1933) I. L. R. 60 Cal 1482.