

JURISDICTION AS COURT OF REVISION

Proceedings of the High Court, dated 22nd February, 1876.

Section 280, Cr. P. C.—Enhancement of punishment by Appellate Court.

1876.
February 22.

Section 280 of the Code of Criminal Procedure authorizes an Appellate Court, subject to the proviso in the final sentence, to enhance any punishment that has been awarded.

As an Appellate Court, 1st Class Magistrate has power to pass any sentence which Subordinate Magistrate might have passed.

Read Proceedings of the 1st Class Magistrate of the Tanjore Division, dated the 9th December 1875, reviewing (on appeal) the Proceedings in Calendar Case No. 572 of 1875 on the file of the 2nd Class Magistrate of Tanjore town.

In this case the 1st Class Magistrate in disposing of an appeal from the sentence of a Subordinate Magistrate has refrained from enhancing a sentence of fine by awarding imprisonment as an additional punishment on the ground that in his opinion the law does not authorize the enhancement of a sentence by awarding a punishment differing in kind from that awarded by the Court whose sentence is appealed from.

The view of the law taken by the 1st Class Magistrate is incorrect. Section 280 of the Code of Criminal Procedure authorizes an Appellate Court, subject to the proviso in the final sentence, to enhance any punishment that has been awarded. Punishment does not here mean the sort of evil or inconvenience inflicted, but the 'dose of punishment,' (Bentham). That dose is enhanced or heightened equally whether another pain legally imposable is added, or the one already imposed is increased in degree.

Whatever doubt may arise on the word as to the power of entirely altering the sort of punishment, there is no doubt that he might have added imprisonment. As an Appellate Court the 1st Class Magistrate had power to pass any sentence which the Subordinate Magistrate might have passed.