

PUBLIC  
PROSECUTOR  
v.  
CHOCKALINGA  
AMBALAM.

not vitiated by illegalities, as suggested, it would be improper to allow more public time to be spent on trying this case, which has already been so unduly protracted, instead of having the appeals heard and disposed of in the ordinary way. The Sessions Judge's order setting aside the convictions and sentences and directing the case to be retried is reversed. The records will be returned to him. He is directed to hear the appeals in full and dispose of them with the least possible delay.

B.C.S.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Waller.*

SUBAN SAHIB AND THREE OTHERS (ACCUSED), PETITIONERS.\*

1928,  
October 29.

*Indian Evidence Act (I of 1872), sec. 54—Criminal Court passing sentence—if precluded from considering evidence of bad character including previous conviction even where exercise of powers under sec. 75 of the Indian Penal Code not intended.*

Section 54 of the Indian Evidence Act does not preclude a Criminal Court from considering evidence of bad character including previous convictions in passing sentence on an accused, even in cases where it is not intended to exercise the powers conferred by section 75 of the Indian Penal Code. *Emperor v. Ismail Ali Bhai*, (1914) I.L.R., 39 Bom., 326, followed.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of Session, Trichinopoly Division, in Criminal Appeal No. 8 of 1928, preferred against the judgment of the Court of the

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\*Criminal Revision Case No. 278 of 1928.

Subdivisional Magistrate of Trichinopoly in C.C. No. 114 of 1927. SURAN SAHIB  
In re.

*M. S. Vaidyanatha Ayyar* for petitioners.

*K. S. Vasudevan* for Public Prosecutor for the Crown.

### JUDGMENT.

The four petitioners with another person not before me were charged before the Town Sub-Magistrate, Trichinopoly, with offences under sections 147, 323, 379 and 426, Indian Penal Code. The last witness was examined by him on 7th October 1927. He then wrote out a long order finding the petitioners and the other man guilty of offences under sections 147, 323, and 426, Indian Penal Code. Having arrived at that conclusion, he proceeded to record evidence which proved that two of the petitioners had previously been convicted of breach of the peace, had been bound over to keep the peace for a year and had broken their bonds. On the strength of this evidence, he sent up the case to the Subdivisional Magistrate, being of opinion that two of the petitioners should receive a severer sentence than he could impose, and that the other two should be bound over to keep the peace. The Subdivisional Magistrate, after considering the evidence, convicted the petitioners of rioting and other offences. In view of the evidence as to their association together and the previous convictions of two of them, he decided to take action under Madras Act V of 1926. Evidence was given that the petitioners were not more than twenty years old and he ordered them to be detained in the Borstal School at Tanjore for the minimum period of two years. An appeal was taken to the Sessions Judge, who set aside the convictions for rioting, but confirmed the sentences.

In revision, it is argued that the trial was vitiated by the admission of evidence of the bad character of two of the petitioners before the Sub-Magistrate. It is

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contended that this is opposed to the provisions of section 54 of the Evidence Act and that the only method by which sentences can be enhanced is to be found in section 75, Indian Penal Code. The wording of section 54 of the Evidence Act is, no doubt, as wide as it can be, but the object is, I think, clear, to lay down that evidence of bad character, including a previous conviction, is, as a rule, irrelevant "to help to establish an accused person's guilt"; but that is not to lay down that it may not be taken into account in passing sentence. The question has been fully considered in *Emperor v. Ismail Ali Bhai*(1), a decision which I propose to follow.

The proper application of section 75, Indian Penal Code, seems to me obvious. It is to cases where it is intended to pass sentences more severe than those provided in the Penal Code for the particular offences charged. But that does not involve a complete exclusion from consideration of previous convictions in cases where it is not intended or possible to exceed the limits fixed by the Penal Code. In very few cases are minimum sentences provided for and the Judge has a wide discretion allowed him. It seems to me impossible to contend that, after conviction, he is disentitled from considering, with a view to the proper exercise of that discretion, the antecedents of the convicted man. If there could be any doubt on the point, it is, I think, set at rest by section 562, Code of Criminal Procedure. That section refers to a far wider range of offences than are included in section 75, Indian Penal Code, and distinctly contemplates the use of previous convictions (not necessarily convictions for the same offence of which the person has just been convicted) to affect the question of sentence. If it is legal to prove a previous

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(1) (1914) I.L.R., 32 Bom., 326.

conviction in order to show that a convicted person cannot avoid being sentenced, I see no reason why previous convictions should not be used by the Court in exercising its discretion in regard to the quantum of the sentence.

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I find no ground for interference. The Criminal Revision Petition is dismissed.

B.C.S.

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### APPELLATE CIVIL—FULL BENCH.

*Before Sir Murray Coutts Trotter, Kt., Chief Justice,  
Mr. Justice Kumaraswami Sastri, Mr. Justice Wallace,  
Mr. Justice Beasley and Mr. Justice Pakenham  
Walsh.*

VASUDEVA SAMIAR ALIAS VASUDEVA PILLAI  
(APPELLANT), APPELLANT.\*

1928,  
October 18.

*Letters Patent (Madras), cl. 15—Judgment—Appeal—Amendment of cl. 15 of the Letters Patent, taking effect on 31st January 1928—Suit filed before amendment—Second Appeal filed before, but judgment of single Judge after, amendment—Appeal under Letters Patent, filed without obtaining leave from the learned Judge—Appeal, whether competent—Amendment, whether retrospective.*

In a suit instituted on the 30th July 1919, a Second Appeal was presented on the 15th July 1924 and was finally disposed of by a single Judge of the High Court on the 9th February 1928. On an appeal being preferred against the judgment, under the Letters Patent, on the 24th April 1928, without leave to appeal having been obtained from the learned Judge, objection was taken to the maintainability of the appeal by reason of the amendment of the Letters Patent requiring such leave, which had come into force on the 31st January 1928.

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\*S.R. No. 12176 of 1928.