

regards the particular case in question, "inferior" to the District Magistrate, within the meaning of s. 435 of the Criminal Procedure Code, and that therefore the District Magistrate had no authority either to call for the record or to direct further inquiry to be held.

The Court made the following order:—

DUTHOIT, J.—Munshi Chet Ram was, by Government Notification No. 724, dated the 30th May, 1882, appointed "to be Magistrate of the first class during such time as he acts as a Deputy Collector;" and, in answer to an inquiry on the subject, the Sessions Judge of Gorakhpur has reported that Munshi Chet Ram has continuously exercised those powers since the date of the Notification, and has not since ceased to officiate as a Deputy Collector.

Following and approving the view of the law taken by the learned Judges of the Calcutta Court in *Nobin Kristo Mookerjee v. Russick Lall Laha* (1) and in *Queen-Empress v. Nawab Jan* (2), I am of opinion that the order of the Magistrate of the Basti District, dated the 29th May, 1884, was *ultra vires* and illegal. I set it aside accordingly. Let the record be returned.

Before Mr. Justice Duthoit.

QUEEN-EMPRESS *v.* SINHA.

*High Court's powers of revision—Criminal Procedure Code, s. 439—Revision of case in which term of imprisonment has been served.*

The High Court is competent, in the exercise of its powers of revision under s. 439 of the Criminal Procedure Code, to interfere with a conviction, even though, in consequence of the expiry of the sentence, it may not be possible to interfere with the latter.

THIS was an application to the High Court for the exercise of its powers of revision under s. 439 of the Code of Criminal Procedure. The applicant had been convicted by a Magistrate of an offence under s. 26 of Act IV of 1879 (Indian Railway Act). The Court called for the record of the case, but before the application came on for hearing, the applicant had served the term of imprisonment to which he had been sentenced.

(1) I. L. R., 10 Calc. 268. (2) I. L. R., 10 Calc. 551.

1884

JHINGURI  
v.  
BACHU.

1884  
October 24.

1884

QUEEN-  
EMPRESSv.  
SINHA.

A preliminary objection was taken on behalf of the Crown to the hearing of the application on the ground that the sentence could not be interfered with.

Mr. A. Strachey, for the applicant.

The *Junior Government Pleader* (Babu Dwarka Nath Banerji), for the Crown.

DUTHOIT, J.—The applicant has served his term of imprisonment, and a preliminary objection is urged by the learned Junior Government Pleader to the effect that as, since the application was filed, the effect of the finding of the Magistrate has become complete, this Court cannot interfere with that finding. I am unable to admit the force of this contention. I can find nothing in the terms of the law to prevent this Court from interfering with a conviction, even though, in consequence of the expiry of the sentence, it may not be possible to interfere with the latter. And cases in which such interference should not be summarily refused may easily be supposed, as, for instance, where a man's *status* is altered by his conviction, (as in convictions under Chapter XII or XVII of the Indian Penal Code, or under the Common Gambling Act), or where, as here, the convict's prospect of future employment depends in a great measure upon the existence or the annulment of the conviction.

(The learned Judge then proceeded to deal with the application on the merits).

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## APPELLATE CIVIL.

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*Before Mr. Justice Mahmood and Mr. Justice Duthoit.*

SOHAN LAL (PLAINTIFF) v. AZIZ-UN-NISSA BEGAM AND OTHERS  
(DEFENDANTS).\*

*Remand*—Appeal from order of remand—Civil Procedure Code, ss. 562, 564, 566, 584, 588 (28),\* 590.

Where a lower appellate Court, instead of remanding a suit under s. 566 of the Civil Procedure Code, erroneously remands it under s. 562, and the party aggrieved by its order appeals to the High Court, under clause (28), s. 588, the High Court cannot deal with the case as if it were a first appeal from a decree.

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\* First Appeal No. 11 of 1884, from an order of Mirza Abid Ali Beg, Subordinate Judge of Sháhjahánpur, dated the 3rd December, 1883.