

Before Mr. Justice Banerji and Mr. Justice Richards.

EMPEROR v. JAMNA BAI.*

1905
June 30.

Criminal Procedure Code, section 438—Revision—Practice—Sentence reduced by Sessions Judge—Application by District Magistrate asking for enhancement.

As a general rule of practice the High Court will not entertain a reference from a District Magistrate which has for its object the enhancement of a sentence which has been reduced by the Sessions Judge. *Queen-Empress v. Shere Singh* (1), *Queen-Empress v. Zor Singh* (2), and *Queen-Empress v. Jahandi* (3) referred to.

ONE Musammat Jamna Bai was convicted by a Magistrate of the first class of an offence punishable under section 241 of Indian Penal Code and sentenced to two years' rigorous imprisonment. She appealed to the Court of Session. The Sessions Judge affirmed the conviction, but reduced the sentence to one of three months' rigorous imprisonment. The District Magistrate thereupon submitted the record of the case to the High Court under the provisions of section 438 of the Code of Criminal Procedure, and asked that the sentence passed upon Musammat Jamna Bai might be enhanced.

The Officiating Government Advocate (Mr. W. Wallach), for the Crown.

BANERJI and RICHARDS, JJ.—This is a reference under section 438 of the Code of Criminal Procedure by the District Magistrate of Allahabad asking this Court to enhance the sentence passed on the accused by the learned Sessions Judge of that district. Musammat Jamna Bai, the accused, was convicted by a Magistrate of the first class of an offence punishable under section 241 of the Indian Penal Code, and sentenced to two years' rigorous imprisonment. She appealed to the Court of Session. The conviction was affirmed by the learned Sessions Judge, but he reduced the sentence to one of three months' rigorous imprisonment. We are of opinion that we should not entertain this reference as such, as we think that the District Magistrate ought not to have made a reference under section 438 with regard to an order made by the Sessions Judge on appeal from the decision of a Subordinate Magistrate.

* Criminal Reference No. 246 of 1905.

(1) (1887) I. L. R., 9 All., 362. (2) (1887) I. L. R., 10 All., 146.
(3) (1895) I. L. R., 23 Calc., 249.

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This is not a case in which the record was examined by the District Magistrate under section 435 of the Code of Criminal Procedure, and we do not think that the Legislature by using the words "or otherwise" in section 438 intended to confer upon a Magistrate the power to question the propriety of an order of a Sessions Court and make a reference to this Court upon that ground. We agree with the learned Judges of the Calcutta High Court who decided the case of *Queen-Empress v. Jahandi* (3) that "it would be contrary to every principle to allow a District Magistrate to report against an order of the Sessions Court to which he is subordinate." The same view has been taken by this Court in *Queen-Empress v. Shere Singh* (1), and again in *Queen-Empress v. Zor Singh* (2). The course to be followed in such a case is pointed out in the case of *Queen-Empress v. Shere Singh* (1). As, however, the Government Advocate has appeared in this case, we have examined the record, and we consider that, although the offence is a very grave one, and although we do not agree with the reason for which the learned Sessions Judge reduced the sentence, yet having regard to the fact that no evidence was given to connect the accused with a gang of coiners or persons issuing false coins, or that the coins which she is shown to have tried to pass off on previous occasions were different coins from the one for which she has been convicted, we do not think the case is one in which we should interfere. We accordingly direct the record to be returned.

(1) (1887) I. L. R., 9 All., 362.

(2) (1887) I. L. R., 10 All., 146.

(3) (1895) I. L. R., 23 Calc., 249.