

1914

GOBIND RAO
v.
KANTA
PRASAD.

against the decree of the District Judge. We have been through the record and considered the arguments addressed to us. On behalf of the appellants we are asked to consider the question whether they should or should not be held to be members of an agricultural tribe under the Bundelkhand Land Alienation Act, and arguments are advanced in favour of the contention that they are so. The real question, however, is as to the effect of the Collector's order returning the record to the Civil Court. Rightly or wrongly the Collector has throughout adhered to the position that these particular judgement-debtors were not members of an agricultural tribe. He at no time put the decree-holder to the option provided by clause (2) of section 9 of the Act. He has in fact refused to allow these judgement-debtors the benefit of the Act. Under these circumstances the District Judge was right, in our opinion, in holding that the Civil Court had no option but to continue the proceedings before it independently of the provisions of the Bundelkhand Land Alienation Act. There was a conditional decree for foreclosure against these judgement-debtors, and the Collector, upon a reference duly made to him, has not passed any order which can be regarded as giving the judgement-debtors the benefit of the Bundelkhand Land Alienation Act. It follows that a decree absolute for foreclosure must inevitably be passed in respect of the share held by these judgement-debtors. We accordingly dismiss this appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Chamier.

EMPEROR v. GANGA*

1914
April, 24.

Criminal Procedure Code, section 438—Enhancement of sentence—Reference made by District Magistrate after the Sessions Judge has declined to refer—High Court—Practice.

Quære whether a District Magistrate is as a matter of law entitled to make a reference to the High Court under section 438 of the Code of Criminal Procedure in a matter in which the Sessions Judge has been asked to send a case up to the High Court for enhancement of sentence and has refused to do so. But if he is so entitled, it is extremely inconvenient that a District Magistrate should do so, and the High Court would not take action upon such a reference

* Criminal Reference No. 240 of 1914.

without special reason. *Queen Empress v. Zor Singh* (1), *Emperor v. Jamna Bai* (2) and *Emperor v. Krishnaji Shyam Rao* (3) referred to.

1914

 EMPEROR
 v.
 GANGA.

IN this case one Ganga Ahir was convicted by the Assistant Sessions Judge of Moradabad of an offence under section 395 of the Indian Penal Code and sentenced to rigorous imprisonment for five years with ninety days solitary confinement. The District Magistrate in the first instance sent the record to the Sessions Judge asking that the case might be forwarded to the High Court with a recommendation that the sentence should be enhanced. The Sessions Judge declined to send the case to the High Court. The District Magistrate accordingly himself submitted the record to the High Court and recommended that the sentence passed upon Ganga should be enhanced.

CHAMBER, J.—This is a reference by the District Magistrate of Moradabad in which he recommends that the sentence of five years' rigorous imprisonment, with ninety days in solitary confinement, passed on Ganga Ahir should be enhanced. The case was tried by the Assistant Sessions Judge, to whom it was transferred by the Sessions Judge. The District Magistrate in the first instance, in accordance with the procedure followed in cases tried by Subordinate Magistrates, sent the record to the Sessions Judge asking that the case might be forwarded to the High Court with a recommendation that the sentence should be enhanced. The Sessions Judge declined to send the case to the High Court. The District Magistrate has accordingly submitted the case direct to this Court. The question whether this can be done has arisen on several occasions. It arose in a case which was in my hands as Government Advocate several years ago. This Court while declining to hold that the District Magistrate was not entitled as a matter of law to submit the case to the High Court, observed that the procedure adopted was inconvenient and declined to interfere. In the two reported cases *Queen Empress v. Zor Singh* (1) and *Emperor v. Jamna Bai* (2) this Court observed that as a general rule it would not entertain a reference from a District Magistrate which had for its object the enhancement of a sentence passed by a Sessions Judge as a court of appeal. The remarks made by BANERJI and RICHARDS, JJ., in the judgement

(1) (1887) I. L. R., 10 All., 146.

(2) (1905) I. L. R., 28 All., 91.

(3) (1904) 6 Bom. L. R., 1099.

1914

EMPEROR
v.
GANGA.

in the latter case apply equally well to the present case. They said: "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." The Bombay High Court seems to take the same view in the matter. [See *Emperor v. Krishnaji Shyam Rao* (1), in which the order passed by the Sessions Judge was an appellate order]. I doubt very much whether the District Magistrate is entitled as a matter of law to make this reference, but, assuming that he is so entitled, I think it is extremely inconvenient that a District Magistrate should criticize an order of a court superior to him in this way. In the present case it seems that the District Magistrate having failed to induce the Sessions Judge to send the case to this Court asked the Commissioner of the Division to send the case up to the Local Government with a view to having the case brought to the notice of this Court by the Government Advocate, but the Commissioner declined to do so. It is quite clear that this Court ought not to interfere in a case of this kind except for special reasons. There appear to be no special reasons in the present case. All that can be said is that the sentence inflicted is some what lighter than is generally inflicted in a case of this kind. In the circumstances I decline to interfere. Let the papers be returned.

APPELLATE CIVIL.

1914

April, 28.

Before Mr. Justice Muhammad Raftq and Mr. Justice Piggott.

MATHURA PRASAD (PETITIONER) v. DURGAWATI AND OTHERS (OPPOSITE PARTIES).*

Act No. VII of 1889 (Succession Certificate Act), section 4—Application for certificate—Applicant alleging himself to be joint with deceased and entitled to his estate by survivorship.

Where an applicant for a succession certificate stated in his application that he was a member of a joint Hindu family with the deceased to whose estate he had succeeded by survivorship. *Held*, that a succession certificate was unnecessary and the application must fail.

* First Appeal No. 203 of 1913 from an order of C. W. Grant, District Judge of Bareilly, dated the 28th of August, 1913.