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KISHAN LAL BABU LAL v. RAM CHANDRA

Ghulam Mohammad, in which it has been held that no revision lies against an order refusing permission to amend a written statement in such a way as to change the entire nature of the defence. The Bench held in that case that there had been no case decided and that no revision was maintainable. The circumstances are clearly distinguishable from the present case in which, as I have held, a case has been decided because a refusal to allow the plaint to be amended does shut out a part of the plaintiff's claim, and the proposed amendment itself does not alter the nature of the plaintiff's suit.

For these reasons I allow the application with costs and direct that the amendment prayed for by the applicant be made in the plaint, and that the court shall thereafter proceed to hear the suit on its merits.

REVISIONAL CRIMINAL

Before Mr. Justice Bajpai.

EMPEROR *v.* MUHAMMAD HASHIM.*

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December, 21

Criminal Procedure Code, sections 435, 439—*Revision—Practice of High Court—Previous application in revision to Sessions Judge or District Magistrate essential to High Court entertaining revision.*

According to a practice of the High Court an application in revision to the Sessions Judge or to the District Magistrate is an essential step in the procedure of filing a criminal revision in the High Court, and failure on the part of the applicant in this respect operates as a bar to the application being entertained by the Court.

The fact that there has been an appeal to a Magistrate, first class, or even to the District Magistrate is not a compliance in principle with this rule. Inasmuch as a revision should and generally does cover different grounds from an appeal, an appeal to the District Magistrate does not serve the object underlying the rule in the same way as a revision would.

* Criminal Revision No. 648 of 1932, from an order of Shambhu Nath, Magistrate, first class, of Benares, dated the 9th of August, 1932.

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EMPEROR v. MUHAMMAD HASHIM

An order of admission made by a Judge of the High Court under clause (1) of section 435 of the Criminal Procedure Code is not sufficient to take the case out of the operation of such rule of practice.

The dictum to this effect in *Emperor* v. *Mansur Husain*, I. L. R., All., 587, not followed.

Mr. *Mansur Alam*, for the applicant.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

BAJPAI, J.—This is an application in revision against an appellate order of a Magistrate confirming the conviction and sentence passed upon the applicant by a Special Magistrate of the third class. A preliminary objection has been taken that this Court is precluded from entertaining the present application by reason of the uniform practice of this High Court refusing to entertain an application in revision where the applicant has not gone *in revision* either to the Sessions Judge or to the District Magistrate. There can be no doubt that in this Court there has grown a practice that an application in revision to the lower court is an essential step in the procedure, and failure on the part of the applicant in this respect operates as a bar to the application being entertained by this Court. This was laid down in the case of *Sharif Ahmad* v. *Qabul Singh* (1). That case purported to follow and to approve of the case of *Emperor* v. *Mansur Husain* (2). The applicant, however, argues that in the present case there has been an appeal to a Magistrate competent to entertain the appeal, and the principle underlying the practice has therefore been followed. But I find that in the case of *Nathe Singh* v. *Emperor* (3) KENDALL, J., refused to entertain an application because the applicant had not gone in revision to the Sessions Judge, even though there had been an appeal to the District Magistrate. In another case, *Sukhraj Singh* v. *Emperor* (4), KENDALL, J., once more refused to entertain an application in revision

(1) (1921) I.L.R., 43 All., 497.
(2) (1919) I.L.R., 41 All., 587.
(3) A.I.R., 1927 All., 829.
(4) A.I.R., 1927 All., 834.

the lack of visibility, and that this act of driving too fast was rash and negligent. This, to my mind, is not enough to fix a criminal liability on the accused. The death of the woman was due to the collision and unless the courts below find as a fact from the evidence on the record, which, it must be conceded, in the present case is very conflicting, that the accused was responsible for the collision, his conviction under section 304A is not legally sustainable. The learned counsel on behalf of the applicant has relied on the case of *Emperor* v. *Omkar Ram Pratap* (1), and I am of the opinion that the law has been laid down correctly in that case. It was held that to impose criminal liability under section 304A, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans;* it is not enough that it may have been the *causa sine qua non.* It is conceded that if on account of the fast driving of the applicant the woman had been by reason of a jerk thrown out of the lorry and killed, or if some pedestrian in the way had been knocked down and killed, the applicant could have been legally convicted under section 304A. But in the present case the death of the woman was due to the collision, and in order to impose a criminal liability on the accused it must be found as fact that the collision was entirely or at least mainly to the act of the applicant and there being no such fi by the lower appellate court, his conviction cannot b tained. I am, therefore, of the opinion that so far a evidence in the present case goes it is not sufficien establish that the accused was wholly or mainly ponsible for the collision. The result is that I allo application, set aside the conviction and senten direct that the accused be forthwith set at liber the fine, if paid, be refunded.

(1) (1902) 4 Bom. L.R., 679.