

Before Mr. Justice King and Mr. Justice Bennet.

MAN SINGH *v.* REOTI.*

Criminal Procedure Code, section 439—Enhancement of sentence—Application in revision by private individual for enhancement—Whether competent.

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M was tried, upon a complaint made by *R*, for an offence under section 324 of the Indian Penal Code and was acquitted by the Sessions Judge. Thereupon, on the complaint of the Sessions Judge, *R* and two of his witnesses were tried and convicted under section 193 of the Indian Penal Code of giving false evidence against *M*, and *R* was also convicted under section 211. *R* was sentenced to six months' rigorous imprisonment and the two witnesses to four months' rigorous imprisonment. On appeal the Sessions Judge upheld the convictions but reduced the sentences to the period already undergone, which was twenty three days. *M* applied to the High Court in revision, for enhancement of the sentences. *Held* that a private individual such as *M* could move the High Court in revision for enhancement of the sentence passed by the Sessions Judge. It was not intended by the code that in these circumstances the only remedy of a complainant should be to apply to a District Magistrate to move the Local Government to apply for an enhancement, because the Local Government would only apply for an enhancement if the enhancement was required in the public interest. The High Court did not regard the question of enhancement only from the point of view of the public interest, but from the circumstances of the particular case before it.

Messrs. *A. P. Dube* and *S. C. Das*, for the applicant.

Mr. *Nehal Chand Shastri*, for the opposite party.

The Assistant Government Advocate (*Dr. M. Wali-ullah*), for the Crown

KING and BENNET, JJ. :—These are three applications for enhancement of sentence filed on behalf of a complainant, *Man Singh*. The various accused persons,

* Criminal Revision No. 345 of 1930, from an order of P. B. Shah, Sessions Judge of Muttra, dated the 2nd of April, 1930.

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Reoti, Bharat Singh and Roshan Singh, have been convicted under section 193 of the Indian Penal Code of giving false evidence against Man Singh on a charge of section 324 of the Indian Penal Code which was brought by Reoti against Man Singh, and Reoti has also been convicted under section 211 of the Indian Penal Code. The convictions were in the court of a Magistrate on the complaint of a Sessions Judge, and they were upheld in appeal by the Sessions Judge. The sentences of six months' rigorous imprisonment on Reoti and four months' rigorous imprisonment each on Bharat Singh and Roshan Singh were reduced by the sessions court to the period of imprisonment already undergone, which was twenty three days.

There was a trial of Man Singh and his son under section 324 of the Indian Penal Code for causing the death of a woman, Musammat Rajo, and Man Singh was acquitted by the sessions court and Debi was acquitted by the High Court on appeal. It is common ground that on the 19th of January, 1929, the kurk amin of Sadabad went to attach property belonging to Reoti and to his brother under a warrant of attachment issued in execution of a decree by Nek Ram. Nek Ram and Debi are sons of Man Singh. The kurk amin states that Man Singh, who is an old man of seventy, was not present on that occasion, and evidence has been given that Man Singh was collecting rents on that date at a village at a considerable distance. The kurk amin states that Reoti and his brother came out with a chopper and showed signs of violence and the kurk amin then left. After that some collision took place between Debi on one side and Reoti and his brother on the other, and in this collision the woman took part and the fatal injury was caused to Mst. Rajo. Reoti made a complaint in which he stated that Man Singh was present with a spade and struck the woman. The question is, was this complaint by Reoti against Man Singh true or

false? The allegations of Reoti were supported by his evidence and by the evidence of Bharat Singh and Roshan Singh, who claimed to have witnessed the occurrence which Reoti alleged took place. On the other hand, we have the evidence of the kurk amin and several witnesses on behalf of Man Singh to the effect that he was not present on this occasion. Both lower courts have believed that evidence and we see no reason to differ. We, therefore, find that the convictions of Reoti, Bharat Singh and Roshan Singh were correct.

Some further argument was addressed to us that a private individual such as Man Singh cannot move this Court in revision, and reference was made to *In re Nagji Dula* (1). In that ruling a Bench of the Bombay High Court held that a private complainant should not apply in revision for enhancement of a sentence passed by a Magistrate, but that he should apply to the District Magistrate, or the Sessions Judge, or Government. Now in the present case the order against which complaint is made is the order of the Sessions Judge and, therefore, it would not have been possible under the Criminal Procedure Code to apply either to the Sessions Judge or to the District Magistrate. It is not, we consider, intended by the Code that in these circumstances the only remedy of a complainant should be to apply to a District Magistrate to move the Government to apply for an enhancement, because the Local Government will only apply for an enhancement if the enhancement is required in the public interest. This Court does not regard the question of enhancement only from the point of view of the public interest, but from the circumstances of the particular case before it. In the present case we consider that the sentences should be largely enhanced, and that the sentences passed in appeal by Mr. P. B. Shah, the Sessions and Subordinate Judge of Muttra, are utterly

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inadequate. . . . In the present case there was a complaint made by Reoti which is shown to have been false, and on that complaint proceedings were instituted in the sessions court for an offence punishable with transportation for life. The offence of Reoti, therefore, came under the second part of section 211 of the Indian Penal Code. Taking all the facts into consideration we enhance the sentence of Reoti to one and a half years' rigorous imprisonment under section 211 of the Indian Penal Code and to one and a half years' rigorous imprisonment under section 193 of the Indian Penal Code. Those sentences will be consecutive and not concurrent. We sentence Bharat Singh and Roshan Singh under section 193 of the Indian Penal Code to two years' rigorous imprisonment each, in enhancement of the sentence already undergone. Warrants will issue for the arrest of these accused.

Before Mr. Justice King.

EMPEROR v. KIFAYAT-ULLAH KHAN.*

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 August, 30.

Arms Act (XI of 1878), sections 4 and 19(f)—Ammunition—Patakhas—Explosive—Explosives Act (IV of 1884) Rules, rule 138(6).

The general words "other explosive or fulminating material," in the definition of ammunition in section 4 of the Arms Act, must, according to the well recognized rule of "*ejusdem generis*", be interpreted in the light of the foregoing examples of explosives. Accordingly the definition must be deemed to include only such explosive or fulminating material as could be used for any military purpose or in particular for fire-arms or torpedos or war-rockets or for mining or blasting. As *patakhas* or crackers, customarily used by children at the time of *Shab-i-Barat*, are quite useless for such purposes, they are not ammunition within the meaning of the Arms Act, and their possession without a license cannot sustain a conviction under section 19(f) of the Act.

It is doubtful whether the possession of *patakhas* without a license amounts to any offence under the Explosives Act, 1884, or the rules, e.g., rule 138(6), made thereunder.