

REVISIONAL CRIMINAL

*Before Justice Sir Edward Bennet*EMPEROR *v.* SATNARAIN LAL*1940
April, 23

Criminal Procedure Code, section 439—Revision—Validity of order admitting a revision only on the question of sentence—Question of correctness of finding will not be heard in such a case—Criminal Procedure Code, section 440—No right of hearing in revision.

Under section 440 of the Criminal Procedure Code counsel has not got any general right of being heard at all in a revision.

Upon an application in revision counsel was heard under the proviso to section 440, and the Judge passed an order "Admit only on the question of sentence. Record need not be sent for." When the revision came up for final disposal counsel sought to address the court on the question of correctness of the finding: *Held*, that the order admitting the revision only on the question of sentence was a perfectly legal order and counsel could not be heard on any other matter. The finding and the sentence were two quite distinct and separate matters.

Mr. *B. B. Chandra*, for the applicant.

The Deputy Government Advocate (Mr. *Sankar Saran*), for the Crown.

BENNET, J.:—This is a criminal revision by Mr. *B. B. Chandra* on account of an accused person Satnarain Lal who has been convicted under section 161 of the Indian Penal Code and sentenced by a Magistrate to four months' rigorous imprisonment and Rs.50 fine or in default two months' further rigorous imprisonment and that sentence has been confirmed by the learned Sessions Judge in appeal. When the revision was filed in this Court a learned single Judge of this Court passed the order "Admit only on the question of sentence. Record need not be sent for. Bail refused. Realisation of fine will not be stayed." When the revision began before me today learned counsel claimed that he had a right to address me not only on the sentence but also on the merits of the finding and his

*Criminal Revision No. 308 of 1940, from an order of Girish Prasad Mathur, Sessions Judge of Basti, dated the 27th of March, 1940.

1940
EMPEROR
v.
SATNARAIN
LAL

argument was that the order of the learned single Judge meant an admission of the revision and therefore it was open to him to argue the revision on all points. Now section 440 of the Criminal Procedure Code provides: "No party has any right to be heard either personally or by pleader before any court when exercising its powers of revision; provided that the court may, if it thinks fit, when exercising such powers hear any party either personally or by pleader." This section shows, therefore, that counsel has not got any general right of being heard at all in this revision. Presumably when the revision came before the learned single Judge he heard counsel on the revision generally by granting a hearing under the proviso of section 440. The learned single Judge then considered that counsel should not be heard further on the question of the finding but that there should be a further hearing on the question of sentence and for that reason the order was passed. It appears to me that the order which was passed by the learned single Judge was an order which was perfectly legal and which he had full jurisdiction to pass. I consider that counsel is not entitled to treat that order as a nullity and no authority for this proposition was shown to me. No doubt any Judge of this Court before whom a revision comes has powers to send for the record as is provided under section 439(1) in the words "or which otherwise comes to its knowledge." But that matter is quite different from the right of counsel to be heard and an order has been passed under section 440 limiting that right in the present case to the question of sentence. Some argument was made that the record was necessary for orders in revision. Under section 435(1) of the Criminal Procedure Code it is provided: "The High Court . . . may call for and examine the record of any proceeding before any inferior criminal court . . . for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed." There are three matters in regard to which the revision may be heard. One is the

finding, another is the sentence and the third is an order. In the present case the learned single Judge decided that the revisional powers should be exercised only by a hearing in regard to the sentence. In my opinion the words "finding, sentence or order" are three separate matters and are separated by the disjunctive conjunction "or"—"finding or sentence or order". For the purpose of a revision of the sentence which has been upheld by the lower appellate court what is required is the record of that court and that record is shown by the certified copy of the order in appeal of the learned Sessions Judge. There is no other proceeding of which there is a record in the session court which would serve any purpose in the present case. Learned counsel for the applicant did not show any ruling in favour of his view. He made some argument to the effect that where the court did not dismiss the revision summarily a notice issued and therefore the whole revision came necessarily before the Court. This argument is made in accordance with section 422 of the Criminal Procedure Code. But that section deals only with appeals and there is no similar section dealing with revisions, nor does any section apply this procedure to revisions.

Having disposed of the preliminary objection I now consider the merits of the question of sentence. The finding of the courts below is that Satnarain Lal is a patwari and he was charged with accepting a five rupee note as a bribe from Ram Nihal who was a party in a mutation case. The defence was that the note had been put into his pocket by some one in order to implicate him. The principal witness for the prosecution was Mr. Udit Narain Srivastava, a Deputy Magistrate, to whom Pandit Sita Ram Sukla, M.L.A. made a complaint that the patwari was taking bribes. Accordingly Ram Nihal came to the Deputy Magistrate and the Deputy Magistrate recorded the statement of Ram Nihal and after consulting the District Magistrate the Deputy Magistrate wrote his name on a five rupee note and gave it to Ram Nihal Singh. Some

1940

 EMPEROR
 v.
 SATNARAIN
 LAL

1940
 EMPEROR
 v.
 SATNARAIN
 LAL

hours later Ram Nihal Singh informed the Deputy Magistrate that the note had been accepted by the patwari and the Deputy Magistrate went to the tahsil compound and searched the accused Satnarain Lal in the presence of the Tahsildar and recovered the note from the bottom of the right pocket of his kurta below certain papers which were also in the pocket. It was for this reason that the courts below held that it would not have been possible for anyone else to put the note into the pocket of the accused. Now the one argument which appeals to me on the question of sentence is one which learned counsel did not make, namely that it is not an uncommon matter for a patwari to take small sums from parties in mutation cases and in other matters. I think, therefore, that the sentence is rather severe and accordingly I set aside the sentence of fine and reduce the sentence of imprisonment from four months' rigorous imprisonment to three months' rigorous imprisonment. The revision is otherwise dismissed.

APPELLATE CIVIL

Before Mr. Justice Collister and Mr. Justice Braund

PARBHU NATH PRASAD (DEFENDANT) v. SARJU PRASAD
 AND OTHERS (PLAINTIFFS)*

1940
 April, 24

Civil Procedure Code, order XXI, rules 58, 63—Vendee claiming the attached property—Decree-holder's suit for a declaration that the property belongs to judgment-debtor and is saleable in execution of the decree—Allegation that the sale deed was a benami, fictitious and sham transaction—Suit not brought "on behalf of all the creditors"—Maintainability—Transfer of Property Act (IV of 1882), section 53—Distinction between allegation of "fictitious, sham transaction" and of a "fraudulent transfer"—Burden of proof.

In a suit under order XXI, rule 63, of the Civil Procedure Code by a decree-holder the plaintiff alleged that the sale deed, by which the property in question had ostensibly been sold

*First Appeal No. 471 of 1937, from a decree of Mohan Shankar Saksena, Additional Civil Judge of Ballia, dated the 19th of August, 1937.