

mortgage deed had been acted upon and this allegation was not denied in 1884, and was actually, in my opinion admitted by the suit for *paramsana* rent in 1934.

Therefore, I find that the palintiffs hold this land on a valid usufructuary mortgage deed, dated 1822 and, therefore, the decision of the learned Munsif was correct and even if the mortgage was invalid they have held this land on that invalid mortgage since 1822, and have now acquired full title by adverse possession.

I, therefore, set aside the decision of the learned Civil Judge and restore that of the original court decreeing the suit. The plaintiffs are entitled to their costs throughout.

Appeal allowed.

REVISIONAL CRIMINAL

Before Mr. Justice Ziaul Hasan and Mr. Justice R. L. Yorke
 KING-EMPEROR THROUGH THAKUR DIN AND BHAGWAN DIN
 (APPLICANT) *v* SOM NATH AND OTHERS (OPPOSITE-PARTIES)*
Criminal Procedure Code (Act V of 1898), section 439—
Enhancement of sentence on application of private individuals—High Court, whether should enhance sentence on application of private individuals.

The High Court has power to enhance the sentence of an accused on the application of a private person, but it should not entertain an application by private parties for enhancement of sentences, as Courts should not be allowed to become tools in the hands of members of the public in giving vent to their private animosities. Further in dealing with applications for enhancement of sentences, the High Court should have regard to what those responsible for maintenance of peace and order in the locality think of the matter, and where therefore an application for enhancement is rejected by the District Magistrate, as he does not consider it necessary in the interests of justice, the High Court should not interfere. *Jadunath Brahman v. King-Emperor* (1) and *Hanuman Prasad v. Mathura Prasad* (2), relied on.

Mr. P. N. Chowdhary, for applicants.

Mr. K. P. Misra, for opposite-party.

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RAGHUBIR
 SINGH
v.
 THAKURAIN
 SUKHAJ
 KUAR

Hamilton,
 J.

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*Criminal Revision No. 80 of 1938, against the order of Chandra Bali Rai, Esq., District Magistrate, Sultanpur, dated the 26th April, 1933

(1) (1927) 4 O.W.N. 699.

(2) (1933) 10 O.W.N. 303

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Asstt. Govt. Advocate, for the Crown.

KING
EMPEROR
THROUGH
THAKUR
DIN
AND
BHAGWAN
DIN
V.
SOM-
NATH

ZIAUL HASAN and YORKE, JJ.:—This is an application for revision of an order of the learned District Magistrate of Sultanpur.

The applicants prosecuted the opposite-parties under sections 147, 323 and 324, I. P. C. They were tried by a Bench of Honorary Magistrates and all of them except Somnath and Parbhunath were convicted under sections 147/323 and sentenced to a fine of Rs.7 each. Somnath and Parbhunath were convicted under section 147/324 and were fined Rs.8 each. The applicants applied in revision to the learned District Magistrate and prayed that a recommendation be made to this Court for enhancement of the sentences of the opposite-parties. This application was disallowed by the learned District Magistrate, who said that the trying Magistrates had given good reasons for not sentencing the accused to imprisonment. It was against this order rejecting their application for revision that the present application has been brought.

The learned counsel for the applicants has referred us to some cases in which it has been held that the High Court has power to enhance the sentence of an accused on the application of a private person. This is a proposition that can hardly be disputed. The question however is whether or not we should entertain an application by private parties for enhancement of sentences. Some of the High Courts have sometimes issued rules for enhancement of sentence on the application of private individuals and have even enhanced sentences on such applications [e.g. *Debi Singh v. Ram Charan Singh* (1), and *Pramatha Nath Basu v. Ganga Charan* (2)]; but this Court has consistently refused to entertain applications for enhancement of sentences on behalf of private parties. In *Jadunath Brahman v. King-Emperor* (3) it was said that it is the part of the

(1) (1929) 30 Cr.L.J., 219.

(2) (1928-29) 33 C.W.N., 395.

(3) (1927) 4 O.W.N., 699.

Crown and not of individuals to ask Courts to enhance sentences passed on criminal offenders. Similarly in *Hanuman Prasad v. Mathura Prasad* (1) another Bench of this Court held that it is the part of the Crown and not of individuals to ask Courts to enhance sentences and refused to entertain an application of a private individual for enhancement of sentence. We prefer to follow the decisions of our own Court which appear to us to be based on a very sound principle, if we may say so with respect, namely that Courts should not be allowed to become tools in the hands of members of the public in giving vent to their private animosities. There is yet another consideration which keeps us in the present case from entertaining the present application. In dealing with applications for enhancement of sentences, the High Court will have regard to what those responsible for maintenance of peace and order in the locality think of the matter and in the present case the fact that the applicant's application for enhancement of the opposite-parties sentences was rejected by the learned District Magistrate, the head of the Magistracy in the district shows that an enhancement of the sentences of the present accused was not considered necessary in the interests of justice.

We therefore dismiss this application.

Application rejected.

(1) (1933) 10 O.W.N., 903.

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and
Yorke, JJ.