would still have been a prosecution not in an official capacity but in a private capacity. What the section does is to enable the officers named to use their official position for the purpose of prosecution without personal risk, and I do not think that any other interpretation of the section is justified by the words used.

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EMPEROR v. YESA NANA

Macklin J.

Order upheld.

Y. V. D.

APPELLATE CRIMINAL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Macklin.

BAI DHANKOR, WIDOW OF DAYASHANKAR GULABDAS (ORIGINAL ACCUSED No. 2), APPELLANT *v.* EMPEROR.*

1936
November 23

Criminal Procedure Code (Act V of 1898), sections 421 and 439—Appeal by the accused—First hearing—Court satisfied as to correctness of conviction, but not of sentence—Court to issue notice to Crown before dismissing appeal summarily—Appeal and notice to be heard together—Practice.

When an appeal first comes on for hearing in which the Court thinks that the conviction is clearly right on the merits, but there is ground for thinking that the sentence is rather too severe, the appeal should not be dismissed summarily. It should be directed to stand over, and at the same time notice should be served on Government under section 439 of the Criminal Procedure Code, 1898, to show cause why the sentence should not be reduced. The Court should also send for the record.

The notice and the appeal should be heard on the same day and if, after hearing the Crown, the Court comes to the conclusion that the sentence should be reduced, the Court should reduce the same under section 439 of the Code. And the Court may, if so minded, then say that there is no ground for interfering with the conviction or sentence so reduced, and make an order dismissing the appeal under section 421 of the Code.

Emperor v. *Dahu Raut*,[1] referred to.

* Criminal Appeal No. 368 of 1936.

[1] (1935) 37 Bom. L. R. 557, s. c. 62 Cal. 983, P. C.

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BAI DHANKOR v. EMPEROR

CRIMINAL APPEAL from an order of conviction and sentence passed by N. J. Shaikh, Sessions Judge, Surat.

Pitambar (accused No. 1), Bai Dhankor (accused No. 2), and Ramratan (accused No. 3) were put upon trial for having committed an offence under section 366A of the Indian Penal Code. At the trial the Jury was of opinion that the accused Nos. 1 and 2 were respectively guilty of offences under sections 373 and 366A of the Indian Penal Code and that accused No. 3 was not guilty.

The Sessions Judge, agreeing with the unanimous opinion of the Jury, sentenced accused No. 1 to suffer three years' rigorous imprisonment and to pay a fine of Rs. 100, or in default to suffer three months' rigorous imprisonment, and accused No. 2 to suffer three years' rigorous imprisonment. The learned Judge, agreeing with the Jury, acquitted accused No. 3.

Accused No. 2 appealed. The appeal was placed before the Court for admission on November 2, 1936, when the Court directed the appeal to stand over and sent for the record and proceedings. On November 23, following, the matter again came on before the Court.

Dewan Bahadur P. B. Shingne, Government Pleader, for the Crown.

BEAUMONT C. J. This appeal came before the Court as an appeal from jail. On perusing the judgment we thought that the conviction was clearly right on the merits, but that there was ground for thinking that the sentence was rather too severe. It was formerly the practice of this Court, in such cases, to mark the appeal as admitted

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as to sentence, which meant in effect that the appeal was dismissed on the merits but notice issued to the Crown to show cause why the sentence should not be reduced. That practice seems to have prevailed in the High Court of Calcutta with this variation that that Court did not always give notice to the Crown. In a recent case, *Emperor* v. *Dahu Raut*,[1] which was an appeal from the High Court of Calcutta, this practice was challenged before the Privy Council, and the Privy Council held that the practice was not in accordance with the Code; that the High Court can dismiss the appeal summarily under section 421, Criminal Procedure Code, if it sees no sufficient ground for interfering; but unless it adopts that course the Court is bound to issue notices under the succeeding sections; and that where the appeal is against both the conviction and sentence the appeal cannot be partially dismissed and notice issued as to the remainder. The practice which prevailed was undoubtedly a convenient one, because it not infrequently happens that the Court is satisfied that there is no ground on which the conviction ought to be disturbed, but at the same time thinks that the sentence does require further consideration. Having regard to the Privy Council decision we are faced with the dilemma of either allowing a sentence, of which we disapprove, to stand, or else of incurring a considerable waste of public time and money in issuing notices to persons whom we do not desire to hear; and in this Presidency, where the High Court has heavy arrears of work, and Government suffers from chronic financial stringency, it is peculiarly desirable to avoid any waste of judicial time or public money. In our opinion, however, the difficulty can be overcome by reducing the sentence under our revisional powers, before we deal with the appeal.

In such cases, the correct procedure, we think, is that when the appeal first comes on for hearing it should not be

[1] (1935) 37 Bom. L. R. 557, s. c. 62 Cal. 983 P. C.

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dismissed summarily, but should be directed to stand over, and at the same time notice should be served on Government under the revisional powers conferred upon the Court by section 439 to show cause why the sentence should not be reduced. At the same time it will be convenient to send for the record. The notice and the appeal will then be heard on the same day. If, after hearing the Government Pleader, the Court comes to the conclusion that the sentence ought to be reduced it can be reduced under the revisional powers. Having reduced the sentence the Court can then, if so minded, say that it sees no ground for interfering with the conviction or sentence so reduced, and can dismiss the appeal summarily under section 421, Criminal Procedure Code.

That course we have adopted in this case. We have heard the Government Pleader as to the sentence, and we think that it was rather too severe. The accused was convicted under section 366A. She was the mother of the girl who had been kidnapped. There is no doubt, we think, that the mother was guilty of the offence charged, but the sentence of three years' rigorous imprisonment was rather too severe, and we reduce that sentence to one of one year under our revisional power. The sentence now being one to which there is no objection, and being satisfied that there is nothing to be said against the conviction on the merits, we dismiss the appeal summarily.

Appeal dismissed.

Y. V. D.