CRIMINAL REVISION.

Before Mr. Justice Caspersz and Mr. Justice Ryves.

EMPEROR

v.

ABDUS SOBHAN.*

1909

May 17.

Practice—Criminal motion to High Court without previous application to lower Court with concurrent jurisdiction—Criminal Procedure Code (Act V of 1898) ss. 435 to 439.

The High Court will not entertain an application for revision in cases where the Sessions Judge or Magistrate has concurrent jurisdiction, whether final or not, save on some special ground, unless a previous application has been made to the lower Courts: but where concurrent jurisdiction is not possessed by the lower Courts, no such general rule exists.

Queen-Empress v. *Reolah* (1) followed.

THE petitioner, Bhuyan Abdus Sobhan Khan, was tried and convicted by M. M. Roy, a Deputy Magistrate of the first class at Balasore, and sentenced on the 30th March 1909, under section 506 of the Penal Code, to a fine of Rs. 100, and in default to one month's rigorous imprisonment. He moved the High Court in revision against the conviction and sentence on various grounds, without, however, having made an application to the Sessions Judge or the District Magistrate under sections 435 and 438 of the Criminal Procedure Code.

Mr. Arthur Caspersz and *Babu Atulya Charan Bose*, for the petitioner.

CASPERSZ AND RYVES JJ. This is an application for the review of an order of a first class Magistrate, dated the 30th March 1909. We are informed that no application on the subject has been made to the Sessions Judge of Cuttack with a view to his referring any error on a point of law for

* Criminal Motion against the order of M. M. Roy, Deputy Magistrate of Balasore, dated March 30, 1909.

(1) (1887) I. L. R. 14 Calc. 887.

1909

EMPEROR v. ABDUS SOBHAN.

final determination by this Court. The practice which ought to be followed in such cases is that indicated in the case of the *Queen-Empress* v. *Reolah* (1), where it was laid down that "the High Court will not entertain an application for revision in cases where the District Court or Magistrate has concurrent revisional jurisdiction with the High Court, save on some special ground shown, unless a previous application shall have been made to the lower Court: but in cases in which concurrent jurisdiction is not possessed by the lower Courts, no such general rule exists." That was a decision arrived at after consultation with the Chief Justice and the other Judges of this Court on the point. We are not prepared to differ from it. We think it is a ruling which should be adhered to.

Two points arise in this connection. The first is whether the practice is one that will prevail in future, and, secondly, whether the concurrent jurisdiction referred to in the case of the *Queen-Empress* v. *Reolah* (1), means concurrent *final* jurisdiction, as for instance, that which is exercised in cases under section 437 of the Criminal Procedure Code where further enquiry can be ordered by the Sessions Judge or by this Court.

With regard to the first question, we certainly think it desirable that the practice should be uniform, and we have every reason to believe that it will be uniform.

With regard to the second contention, all we need say is that the case of *Queen-Empress* v. *Reolah* (1) was with reference to section 435 of the Code, and not one in which the Sessions Judge was competent to pass the final order.

The learned counsel has asked that this application may be returned to him without prejudice to his client to come up to this Court, if necessary, after he has applied to the Sessions Judge. We think it will be proper to return him the application.

Let the application, therefore, be returned for the purpose indicated.

Application returned.

(1) (1887) I. L. R. 14 Calc. 887.

E. H. M.