

**Emperor Vs. Ghasite**

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**SooperKanoon Citation :** [sooperkanoon.com/448273](http://sooperkanoon.com/448273)

**Court :** Allahabad

**Decided On :** Sep-10-1914

**Reported in :** AIR1914All548(2); (1915)ILR37All31

**Judge :** Piggott, J.

**Appellant :** Emperor

**Respondent :** Ghasite

**Judgement :**

**Piggott, J.**

1. I think there is good deal to be said for the view taken of this case by the District Magistrate, but I am inclined to doubt whether it is worth this Court's while to interfere. The District Magistrate seems to think that this Court in revision can set aside an order under Section 562 of the Code of Criminal Procedure and of its own authority substitute for that order a sentence of whipping or of imprisonment. Under Sections 439/423 of the Code of Criminal Procedure, this Court certainly could not take the action suggested. The provisions of Section 439 itself empower the High Court in revision to enhance a sentence, but it is clear that no sentence has been passed in the present case. The court instead of sentencing the accused has ordered him to enter into a bond to appear and receive sentence when called upon. The point of law thus taken may appear a technical one, but it is closely connected with another question of considerable importance, viz., the question

whether an appeal lies against an order under Section 562 of the Code of Criminal Procedure. I have recently followed the Punjab Chief Court in holding that an appeal does lie, and that question necessarily depends upon the soundness of the contention that in a case like the present no sentence has been passed. It follows, therefore, that if this Court interferes at all in this matter it can only order the case to be re-tried. Under all the circumstances of the case I do not think it worth while to take this step. Let the record be returned.

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