

Emperor Vs. Gansa

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Court : Allahabad

Decided On : Apr-24-1914

Reported in : (1914)ILR36All378

Judge : Chamier, J.

Appellant : Emperor

Respondent : Gansa

Judgement :

Chamier, J.

1. This is a reference by the District Magistrate of Moradabad in which he recommends that the sentence of five years' rigorous imprisonment, with ninety days in solitary confinement, passed on Ganga Ahir should be enhanced. The case was tried by the Assistant Sessions Judge, to whom it was transferred by the Sessions Judge. The District Magistrate in the first instance in accordance with the procedure followed in cases tried by Subordinate Magistrates, sent the record to the Sessions Judge asking that the case might be forwarded to the High Court with a recommendation that the sentence should be enhanced. The Sessions Judge declined to send the case to the High Court The District Magistrate has accordingly submitted the case direct to this Court. The question whether this can be done has arisen on several occasions. It arose in a case which was in my hands as Government Advocate several years ago. This Court while declining to

hold that the District Magistrate was not entitled as a matter of law to submit the case to the High Court, observed that the procedure adopted was inconvenient and declined to interfere. In the two reported cases *Queen Empress v. Zor Singh* (1887) I. L. R. 10 All. 146. and *Emperor v. Jamna Bai* (1905) I. L. R. 28 All. 91. this Court observed that as a general rule it would not entertain a reference from a District Magistrate which had for its object the enhancement of a sentence passed by a Sessions Judge as a court of appeal. The remarks made by Banerji and Richards, JJ., in the judgment in the latter case apply equally well to the present case. They said: ' We do not think that the Legislature by using the words. ' or otherwise ' in Section 438 intended to confer upon a Magistrate the power to question the propriety of an order of a Sessions Court and make a reference to this Court upon that ground.' The Bombay High Court seems to take the same view in the matter. [See *Emperor v. Krishnaji Shyam Rao* (1904) 6 Bom. L. R. 1099. in which the order passed by the Sessions Judge was an appellate order], I doubt very much whether the District Magistrate is entitled as a matter of law to make this reference, but, assuming that he is so entitled, I think it is extremely inconvenient that a District Magistrate should criticize an order of a court superior to him in this way. In the present case it seems that the District Magistrate having failed to induce the Sessions Judge to send the case to this Court asked the Commissioner of the Division to send the case up to the Local Government with a view to having the case brought to the notice of this Court by the Government Advocate, but the Commissioner declined to do so. It is quite clear that this Court ought not to interfere in a case of this kind except for special reasons. There appear to be no special reasons in the present case. All that can be said is that the sentence inflicted is some what lighter than is generally inflicted in a case of this kind. In the circumstances I decline to interfere. Let the papers be returned.