

**Emperor Vs. Prem**

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**SooperKanoon Citation :** [sooperkanoon.com/467379](http://sooperkanoon.com/467379)

**Court :** Allahabad

**Decided On :** Jan-31-1929

**Reported in :** AIR1929All270

**Appellant :** Emperor

**Respondent :** Prem

**Judgement :**

1. This is a reference made to us through the Sessions Judge of Saharanpur by the District Magistrate of Saharanpur asking for an enhancement of the sentence of six months' rigorous imprisonment passed upon Prem under Section 457, I.P.C. The facts of this case are somewhat different to Emperor v. Bashir A.I.R. 1920 All. 267 (2), from the same district of which we have just disposed. In that case there was no question but that the negligence which led to the omission to take into consideration the previous convictions was due solely to the negligence of the investigating or prosecuting officers. The Magistrate was not in the remotest degree to blame. In this case we have read the various explanations and orders dealing with the fact that three previous convictions were not given, at any rate, full weight in awarding the sentence. It is unnecessary to examine the case in detail.

2. It appears that the convictions were set out in detail in the charge sheet set up by the police. They were drawn to the attention of the Magistrate at the very commencement. The existence of some convictions of some sort came to the attention of the Magistrate in a statement volunteered by the accused in answer to

a question but not to a question directed towards the existence of the convictions, and the answer of the accused did not suggest the dates of the convictions, or the offences for which he was convicted, or the sentences which he received. After that there is nothing to show that anything was brought to the attention of the Magistrate.

3. The trial Magistrate has stated the case very frankly and says that he has not possibly time when trying his various cases to be examining the record to look for such matters as the possible existence of previous convictions, and says that the primary duty in this respect lies upon the prosecution. There is a duty cast upon the trial Magistrate to see that all the material evidence is, if possible, before the Court, and it is a duty which sometimes Magistrates do not fully discharge. But on the other hand it is a general duty, and that duty cannot possibly be held to relieve the prosecution from what is clearly primarily their duty to see that matters, such as the existence of previous convictions are brought definitely to the notice of the Court at the proper time. In this particular case it would appear that the accused would not have denied the existence of the particular convictions if they had been put to him, and did in fact voluntarily admit that there were previous convictions of some sort against him. As it cannot be said that the Magistrate did not have these previous convictions brought to his notice at all and was not to some, though a very slight, extent responsible for not taking steps in regard to them, we might have been disposed, if the circumstances were otherwise, to set aside the conviction and sentences and to direct the Court to proceed as from the date immediately preceding the judgment, and to question the accused about the previous convictions, and if necessary to take evidence in regard thereto, but we do not think in the present case that the interests of justice call for this further expenditure of public time and money. The last conviction of the accused is said to have been on 18th February 1925, to one year's rigorous imprisonment, and he presumably was released from jail somewhere in the beginning of February 1926. The offence with which he has now been charged was committed on 25th August 1928. There is, therefore, so far as the record goes, nothing against this man during a period of two and a half years, and he has actually received a sentence of six months' rigorous imprisonment. Under the circumstances we do not think it necessary to interfere, and with this expression of our opinion let the record be

returned.

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