

**Mohammad Hashim Vs. Notified Area**

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**SooperKanoon Citation :** [sooperkanoon.com/472337](http://sooperkanoon.com/472337)

**Court :** Allahabad

**Decided On :** Dec-21-1932

**Reported in :** AIR1933All283; 145Ind.Cas.726

**Appellant :** Mohammad Hashim

**Respondent :** Notified Area

**Judgement :**

ORDER

**Bajpai, J.**

1. This is an application in revision against an appellate order of a Magistrate confirming the conviction and sentence passed upon the applicant by a Special Magistrate of the Third Class. A preliminary objection has been taken that this Court is precluded from entertaining the present application by reason of the uniform practice of this High Court refusing to entertain an application in revision where the applicant has not gone in revision either to the Sessions Judge or to the District Magistrate. There can be no doubt that in this Court there has grown a practice that an application in revision to the lower Court is an essential step in the procedure, and failure on the part of the applicant in this respect operates as a bar to the application being entertained by this Court. This was laid down in the case of Sharif Ahmad v. Qabul Singh AIR 1921 All 30. That case purported to follow and to approve of the case of Emperor v. Mansur Husain AIR 1919 All 258. The

applicant however argues that in the present case there has been an appeal to a Magistrate competent to entertain the appeal, and the principle underlying the practice has therefore been followed. But I find that in the case of *Nathe Singh v. Emperor* : AIR1927 All829 , Kendall, J., refused to entertain an application because the applicant had not gone in revision to the Sessions Judge, evict though there had been an appeal to the District Magistrate.

2. In another case *Sukhraj Singh v. Emperor* : AIR1927 All834 , Kendall, J., once more refused to entertain an application in revision although there had been an appeal to the District Magistrate, and pointed out that the objects of laying down the said rule of practice were, in the first place, to prevent the time of the High Court from being wasted by frivolous or unsustainable applications; and, secondly, to obtain an expression of opinion by a Court of superior jurisdiction, such as that of the Sessions Judge or the District Magistrate, in case the matter should eventually come before the High Court. He also said that the latter object could not be attained by an appeal to the District Magistrate as well as it could by an application in revision, for the latter should and generally does cover different grounds from an appeal. It has however been argued before me that in *Mansur Husain's case* AIR 1919 All 258, Piggott, J., held that an order of admission made by a Judge of the High Court under Clause (1), Section 435, Criminal P.C. though passed ex parte, will be sufficient to take the case out of the operation of such rule of practice. This dictum of the learned Single Judge was not followed in effect in the three cases which I have mentioned before, at least in the two cases decided by Kendall. I am of the opinion that the salutary effect of the rule would to a great extent be reduced if the dictum of Piggott, J., be followed. I am therefore of the opinion that I am precluded from entertaining the present application at this stage, and I dismiss it.