

**Emperor Vs. Mohan Lal**

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**SooperKanoon Citation :** [sooperkanoon.com/476816](http://sooperkanoon.com/476816)

**Court :** Allahabad

**Decided On :** Mar-26-1915

**Reported in :** 29Ind.Cas.65

**Judge :** Henry Richards, C.J. and ;Piggott, J.

**Appellant :** Emperor

**Respondent :** Mohan Lal

**Judgement :**

1. This case comes before us as a reference from the learned Sessions Judge of Bareilly. Four persons, Mohan Lal, Baldeo Prasad, Debi Sahai and Ram Ghulam, were all tried by a Magistrate on charges under Section 408 read with Section 114 of the Indian Penal Code, and convicted. They all appealed to the Sessions Judge. He seems to have been of opinion that the case against Debi Sahai was not proved. He was also of opinion that the punishments awarded to the other three were insufficient. He has submitted the case to this Court with a recommendation that we should acquit Debi Sahai and enhance the sentences passed on the other three. So far as his recommendation that we should acquit Debi Sahai is concerned, it is quite clear that it was his duty to either dismiss or allow the appeal of Debi Sahai. The learned Sessions Judge ought not to have referred the case of Debi Sahai to this Court at all. With regard to his recommendation for enhancement the learned Sessions Judge seems to have overlooked the provision of Section 439(3) of the Code of Criminal Procedure which is as follows: 'Where

the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under Section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed than might have been inflicted for such offence by a.... Magistrate of the first Class.' The Magistrate of the first Class has given the full amount of imprisonment which he could give under the law. It follows, therefore, that a higher sentence could not be passed without a re-trial. If the learned Sessions Judge thought that the case ought to be re-tried by the Court of Session, he ought himself to have set aside the conviction and ordered a commitment under Section 423(1)(b). That he has power to do this has been ruled in the case of Queen-Empress v. Maula Bakhsh 15 A. 205 : A.W.N. (1893) 105. We think, however, that the power of ordering a new trial merely for the purpose of enhancing the punishment is a power that ought to be very sparingly exercised. We do not for one moment wish to be taken as saying that the offence for which the accused have been found guilty (particularly under the present circumstances), was not a most serious one. Nor do we wish to say that it would not have been better if the accused had been committed in the first instance to the Court of Sessions. At the same time the sentences cannot be said to have been nominal sentences. There is a strong principle that a man ought not to be tried a second time unless there are very grave reasons for so doing.

2. The only order we feel bound to pass is that the record be returned to the learned Sessions Judge that he may complete the disposal of the appeals. We order accordingly.