

**In Re: Suban Sahib and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/791860](http://sooperkanoon.com/791860)

**Court :** Chennai

**Decided On :** Oct-29-1928

**Reported in :** (1929)56MLJ595

**Appellant :** In Re: Suban Sahib and ors.

**Judgement :**

**Waller, J.**

1. The four petitioners with another person not before me were charged before the Town Sub-Magistrate, Trichinopoly, with offences under Sections 147, 323, 379 and 426, Indian Penal Code. The last witness was examined by him on 7th October, 1927. He then wrote out a long order finding the petitioners and the other man guilty of offences under Sections 147, 323 and 426, Indian Penal Code. Having arrived at that conclusion, he proceeded to record evidence which proved that two of the petitioners had previously been convicted of breach of the peace, had been bound over to keep the peace for a year and had broken their bonds. On the strength of this evidence, he sent up the case to the Sub-divisional Magistrate, being of opinion that two of the petitioners should receive a severer sentence than he could impose and that the other two should be bound over to keep the peace. The Sub-divisional Magistrate, after considering the evidence, convicted the petitioners of rioting and other offences. In view of the evidence as to their association together and the previous convictions of two of them, he decided to take action under Madras Act V of 1926. Evidence was given that the petitioners

were not more than twenty years old and he ordered them to be detained in the Borstal School at Tanjore for the minimum period of two years. An appeal was taken to the Sessions Judge, who set aside the convictions for rioting, but confirmed the sentences.

2. In revision, it is argued that the trial was vitiated by the admission of evidence of the bad character of two of the petitioners before the Sub-Magistrate. It is contended that this is opposed to the provisions of Section 54 of the Evidence Act and that the only method by which sentences can be enhanced is to be found in Section 75, Indian Penal Code. The wording of Section 54 of the Evidence Act is, no doubt, as wide as it can be, but the object is, I think, clear--to lay down that evidence of bad character, including a previous conviction is, as a rule, irrelevant 'to help to establish an accused person's guilt'; but that is not to lay down that it may not be taken into account in passing sentence. The question has been fully considered in *Emperor v. Ismail Ali Bliai* I.L.R. (1914) B. 326, a decision which I propose to follow.

3. The proper application of Section 75, Indian Penal Code, seems to me obvious. It is to cases where it is intended to pass sentences more severe than those provided in the Penal Code for the particular offences charged. But that does not involve a complete exclusion from consideration of previous convictions in cases where it is not intended or possible to exceed the limits fixed by the Penal Code. In very few cases are minimum sentences provided for and the Judge has a wide discretion allowed him. It seems to be impossible to contend that, after conviction, he is disentitled, from considering, with a view to the proper exercise of that discretion, the antecedents of the convicted man. If there could be any doubt on the point, it is, I think, set at rest by Section 562, Code of Criminal Procedure. That section refers to a far wider range of offences than are included in Section 75, Indian Penal Code, and distinctly contemplates the use of previous convictions (not necessarily convictions for the same offence of which the person has just been convicted) to affect the question of sentence. If it is legal to prove a previous conviction in order to show that a convicted person cannot avoid being sentenced, I see no reason why previous convictions should not be used by the Court in exercising its discretion in regard to the quantum of the sentence.

4. I find no ground for interference. The Criminal Revision Petition is dismissed.

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