

Bhuyan Abdus Sobhan Khan

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Court : Kolkata

Decided On : May-17-1909

Reported in : 2Ind.Cas.846

Judge : Caspersz and ;Ryves, JJ.

Appellant : Bhuyan Abdus Sobhan Khan

Judgement :

1. This is an application for the review of an order of a 1st Class Magistrate, dated the 30th March 1909. We are informed that no application on the subject has been made to the Sessions Judge of Cuttack with a view to his referring any error on a point of law for final determination by this Court. The practice which ought to be followed in such cases is that indicated in the case of the Queen-Empress v. Reolah 14 C. 887 where it was laid down that ' the High Court will not entertain an application for revision in cases where the District Court or Magistrate has concurrent revisional jurisdiction with the High Court, save on some special ground shown, unless a previous application shall have been made to the lower Court : but in cases in which concurrent jurisdiction is not possessed by the lower Courts, no such general rule exists.' That was a decision arrived at after consultation with the Chief Justice and the other Judges of this Court on the point. We are not prepared to differ from it. We think it is a ruling which should be adhered to.

2. Two points arise in this connection. The first is whether the practice is one that will prevail in future, and, secondly, whether the concurrent jurisdiction referred to

in the case of the Queen-Empress v. Reolah 14 C. 887 means concurrent final jurisdiction, as for instance, that which is exercised in cases under Section 437 of the Criminal Procedure Code where further enquiry can be ordered by the Sessions Judge or by this Court.

3. With regard to the first question, we certainly think it desirable that the practice should be uniform, and we have every reason to believe that it will be uniform.

4. With regard to the second contention, all we need say is that the case of Queen-Empress v. Reolah 14 C. 887 was with reference to Section 435 of the Code and not one in which the Sessions Judge was competent to pass the final order.

5. The learned Counsel has asked that this application may be returned to him without prejudice to his client to come up to this Court, if necessary, after he has applied to the Sessions Judge. We think it will be proper to return him the application.

6. Let the application, therefore, be returned for the purpose indicated.

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