

Emperor Vs Prem

Court: Allahabad High Court

Date of Decision: Jan. 31, 1929

Final Decision: Disposed Of

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 u/s 457, I.P.C. The facts of this case are somewhat different to Mohan

Singh Vs. Emperor through Gyasia, , 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 seat 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.