

1907
 PUBSHOTTAM
 v.
 BALVANT.

The only other point which it is necessary to notice is the form in which the Collector's intervention has been made. In my opinion it was altogether irregular and contrary to the manner in which proceedings in Courts of justice should be conducted. If the Collector thought it necessary to bring to the notice of the Judge an objection to the sale of this country-liquor he should have done so in the ordinary manner by an application made in open Court, so that it could be dealt with by the Judge judicially.

Order accordingly.

G. B. R.

CRIMINAL REFERENCE.

Before Mr. Justice Chandavarkar and Mr. Justice Knight.

1908
 January 16. *EMPEROR v. CHINTO BHAIRAVA.**
Criminal Procedure Code (Act V of 1898), section 439—Reference to High Court—Enhancement of sentence—Practice of the High Court to accept the conviction as conclusive.

It has been the invariable practice of the Bombay High Court, in cases that come before it for enhancement of sentence, to accept the conviction as conclusive and to consider the question of enhancement of sentence on that basis.

This was a reference under section 438 of the Criminal Procedure Code (Act V of 1898), made by C. Hudson, District Magistrate of Dharwar.

The accused, a Municipal Secretary, was convicted of an offence punishable under section 162 of the Indian Penal Code. The trying Magistrate, "having regard to his position as a Secretary of the Municipality and also to his age (45)", sentenced him only to pay a fine of Rs. 200.

The District Magistrate of Dharwar being of opinion that the sentence was inadequate, referred the case to the High Court, observing:—

"Accused was Municipal Secretary in Gadag Bettigeri, an important place. He is a strongish looking man of 45. The offence is a serious one, and I can find no extenuating circumstances."

* Criminal Reference No. 100 of 1907.

D. A. Khare, for the accused.

PER CURIAM:—Mr. Khare, the learned Pleader for the opponent, in showing cause why the sentence should not be enhanced, asks us to allow him to discuss the evidence and satisfy us that his client has been wrongly convicted. But we cannot allow that as it has been the invariable practice of this Court in such cases to accept the conviction as conclusive and to consider the question of enhancement of sentence on that basis. That practice has been consistently adhered to by this Court for over 25 years now, and ought, we think, to be followed. It was open to the opponent to apply for revision of the conviction, but having failed to avail himself of that, he cannot be permitted to assail the conviction in a proceeding where the sole question is whether the sentence passed by the lower Court is adequate or not. We enhance the sentence to one of rigorous imprisonment for two months in addition to the sentence of fine passed by the Magistrate which is to remain.

1908

EMPEROR
v.
CHINTO.

R. R.

ORIGINAL CIVIL.

Before Mr. Justice Davar.

MEIGHBAI v. POONJABAI.*

High Court Rules, Rule 80 (a 1)†—Pauper, petition to sue as—Prothonotary's decision—Application to Judge in Chambers—Right to be heard.

1907.

March 16.

The plaintiff filed a petition to be allowed to continue her suit in *forma pauperis*. The petition was heard by the Prothonotary under Rule 80 (a) of the Bombay High Court Rules, 1901. The petitioner applied under Rule 80 (a 1) to have the matter adjourned into Court:

Held, that the party dissatisfied with the Prothonotary's decision is entitled to apply to the Chamber Judge to have the matter adjourned to him, and that the Judge in Chambers is bound to decide the matter for himself.

* Pauper Petition No. 17 of 1906.

† Rule 80 (a 1) of the High Court Rules (1st Edn.) runs as follows:—

Any party desiring to have any question decided by the Prothonotary, whether disputed or not, adjourned to the Judge, may apply to the Judge in Chambers for such adjournment, within eight days of the issuing of the order complained of or within such further period as the Judge for sufficient cause may allow.