BOMBAY HIGH COURT

Emperor

Vs

Jehangir Ardeshir Cama

(Crump, C.J. Madgavkar, J.)

11.04.1927

JUDGMENT

Madgavkar, J.

1. The accused, Jehangir Ardeshir Rustomji Cama, a Deputy Collector under suspension, was convicted by the Special First Class Magistrate, Mr. Willis, under Section 161 of the Indian Penal Code on three charges in this case and sentenced to simple imprisonment for three months and a fine of Rs. 500, in default two months further simple imprisonment on each of the first two charges, and six months simple imprisonment and a fine of Rs. 1000, in default further three months simple imprisonment on the third charge, the sentences to run consecutively. In appeal he was acquitted in respect of the third charge, and the convictions and sentences on the first two charges were maintained. He has applied in revision to this Court against his convictions and sentences. Government have also applied to enhance the sentences. The result is that under Section 439(6) of the Code of Criminal Procedure the accused, as he was entitled, has exercised his right to show cause against his convictions. Confining myself to the first case and the two charges which are known as the Harangam and Sadarvel cases, Mr. Thakor for Cama has taken us exhaustively through the record, pointed out to us the discrepancies and the improbabilities, and has also minutely argued each point of law. Mr. Velinker for the Crown has confined himself to the broad aspects of the case and relied in the main on the judgments of the Magistrate and the Sessions Court.

2. Before entering into the points of law taken, it will be convenient shortly to state the history of the case. Mr. Macmillan, the District Magistrate of Surat, under whom the accused was working as Deputy Collector and Sub-Divisional Officer, Southern Division, communicated with the Criminal Investigation Department. The Deputy Inspector General placed Mr. Kothavalla, on January 21, 1925, at the disposal of Mr. Macmillan to make a confidential enquiry and submit a report. He made his inquiries from March to May and recorded the statements of certain witnessess. Their statements were also recorded at his request in March by Mr. Dullabhbhai, a

Mamlatdar and Magistrate of the Bulsar Taluka. Subsequently, in August 1925, Government, under Section 197 of the Code of Criminal Procedure, issued the necessary sanctions. Mr. Kothavalla then lodged formal complaints before Mr. Jayakar, Acting District Magistrate, Mr. Jayakar ordered Mr. Kothavalla, under Section 155(2) of the Code of Criminal Procedure, to hold an investigation. Mr. Kothavalla thereupon recorded again these statements and some others and again sent up certain witnesses to Mr. Narandas Mehta, who had succeeded Mr. Dullabhbhai, for recording their statements. The accused had been suspended in July. His trial commenced in December 1925 and ended in April 1926. He appealed, and was released on the same day on bail by the Court of Session. His appeals were decided in October 1926 with the result stated above. With this preliminary history I proceed at once to consider in their order the various points of law raised.

3. The first point has reference to the order of Government, Ex. 28 (L), under Section 14, Criminal Procedure Code, appointing Mr. Willis to try "the case." It was argued that this authority to try "the case" does not make Mr. Willis competent to try three charges. It may be conceded perhaps that it would have been preferable if the order had explicitly run, "the case or cases." At the same time a case is not necessarily a single charge. It comprises all charges or classes of charges. In construing this order as in construing any other document, a reasonable construction must be placed, and the question asked, what was the intention of the person responsible for the order, how far that intention clearly appears, and whether there is any real ambiguity such as to mislead or prejudice any of the parties concerned. Section 14 expressly authorises the Magistrate to try cases or class of cases. In this view, so far as the present case of two charges is concerned, I see no difficulty. This was the first case Mr. Willis tried, and he had ample authority to include in it the three charges, which were legally comprised within that case. The fact that Government appointed no other Magistrate and appointed Mr. Willis "to try the case relating to the prosecution of Mr. J.A.R. Cama" shows that Government intended that Mr. Willis should try the present charges, and expressed themselves to that effect. The contention therefore fails.

4. The second objection relates to the sanction under Section 197 of the Code of Criminal Procedure, Ex. 28 (F), p. 517, and the words therein, "in the month of February" amended on January 26, 1925 (p. 528) by adding the words "or March (March 1, 1924) It appears that in respect of the offence referred to in this sanction the books of the goldsmith at Navsari showed a purchase on Saturday, Magh Vad 10th, St. 1980. A reference to authoritative Government diaries shows that Magh Vad 10th, St. 1980, was shown as Friday, February 29, 1924. And the prosecution, somewhat hastily, perhaps, assumed and proceeded from the sanction onwards on the assumption that the Saturday was a mistake and that the correct date was the English date shown in the Government diaries as corresponding to Magh Vad 10th, St. 1980, viz., February

29, Friday. In the course of the trial, however, the prosecution decided that this assumption was a mistake and that the Saturday was correct, and that the confusion was due to the confused system of the Hindu calendars and lunar years; and the charge was altered from the original February 29 to March 1. Proceedings were stayed and the sanction amended as above. Under these circumstances it is contended for Cama that the previous sanction was, so to speak, null and void and with it all the proceedings held thereunder end up to the amended sanction.

5. It is perfectly correct that under Section 197 of the Code of Criminal Procedure no Court could take cognisance of these offences except with the previous sanction of Government. The questions in regard to these sanctions are: is the offence designated *(Queen-Empress v. Samavier[1])* or is there any vagueness about it (*Emperor v. Madhav Laxman[2])*? Applying again to this objection the same principles applied in regard to the order of appointment of Mr. Willis, it appears that there is really no vagueness about the sanction. The other details specified make it clear that the offence charged and enquired into was what it was throughout alleged to be. I agree that in granting sanction Government need not specify the offences with the same degree of precision as in a charge : *Girwardhari Lal v. The King-Emperor[3]* Had there been two offences, one on February 29 and another on March 1, the objection might have been valid; but as throughout the question is only of a single offence, which is otherwise properly described and specified, the sanction is not in our opinion bad. At the same time it may be conceded it would have been preferable if the sanction like the charge had used the words, "on or about" and not merely the word "on" or if the prosecution had been from the outset more careful whether it was Friday, February 29, or Saturday March 1, that the gold was alleged to have been purchased and given, Moreover, the defence had reserved their cross-examination, and did not cross-examine any of the witnesses till after the charge. It is difficult to see what prejudice was caused to the defence.

6. The third objection relates to Section 360 of the Code of Criminal Procedure, and two rulings of the Calcutta High Court, *Hira Lal Ghose v. Emperor[4] and Dargahi v. Emperor[5]* have been cited in support. My learned brother invited the attention of counsel to the very recent Privy Council case, Abdul Rahman v. Emperor (1926) 29 Bom. L.R. 813, overruling these two cases. It is not, therefore, necessary to consider the previous decisions, which will all be found in *Ramesh Chandra Das v. Emperor[6]* or to my judgment in *Pitumal v. Crown[7]* where I differed from the Calcutta view.

7. The last objection refers to the procedure of the police and of the Magistrates, and particularly to statements recorded by both before the trial and their use. As regards the statements recorded by Mr. Kothavalla from March to May 1925 before the Government sanction for prosecution, and before the District Magistrate ordered him to investigate the offences : these statements

recorded by MR. Kothavalla were not statements under Section 162 of the Code of Criminal Procedure, because there was no investigation within the meaning of the term, "during the course of the investigation" under Section 162 of the Criminal Procedure Code. To all intents and purposes they were on a par with the statements recorded in a departmental enquiry: *Queen-Empress v. Karigowda*[8] The witnesses were not bound to answer, and their ignorance of this fact does not affect the legal position.

8. Similarly the statements recorded by Mr. Dullabhbhai in March 1925. Government had sanctioned no complaint and they were not made "in the course of an investigation or at any time afterwards" under Section 164 of the Code of Criminal Procedure, nor were the witnesses bound to answer. As to the propriety of these statements, speaking for myself, I find it difficult to see how Mr. Kothavalla could have made a report without recording the statements made to him. Even Mr. Thakore, who in other respects has pressed his arguments for the defence to the utmost possible extreme, has not suggested that Mr. Kothavalla could be expected to carry in his memory these statements without a written record of them.

9. It might be argued, however, with greater plausibility that the propriety of the statements before Mr. Dullabhbhai is more open to question, looked at from a purely judicial point of view. These confidential enquiries are in their nature difficult and delicate. Whatever Mr. Kothavalla's reasons were, whether he desired to protect himself from allegations such as were subsequently made against his Assistant, Mr. Billimoria, or whether he was not sure of these witnesses, and particularly in view of the fact that evidence has been adduced of attempts by the defence to tamper with witnesses such as the visit of the son-in-law of the main witness Adam Isap to Mr. Gandhi the counsel for the accused (I desire to add that there is no imputation whatever made against Mr. Gandhi)-in the face of all those circumstances I confess myself unable to condemn the taking of the witnesses before Mr. Dullabhbhai, provided the witnesses were not taken there against their will. The Courts may not tolerate any breach of the law; but they must also be alive to the realities and difficulties in cases such as the present when it has to be discovered whether allegations of corruption are idle rumour or malice or whether there is any substratum of truth in them.

10. But the statements recorded by Mr. Kothavalla after Mr. Jayakar's order under Section 155(2) clearly fall under Section 162, Criminal Procedure Code. Nothing can be said against their legality or their propriety.

11. The statements recorded by Mr, Narandas Mehta fall under Section 164. The Calcutta High Court has held *(Queen-Empress v. Jadub Das*[9] *and Emperor v. Nuri Sheikh*[10] that it is hardly desirable that witnesses should be pinned down by statements under Section 164, and that Sessions Judges should not admit them under Section 288 without making proper enquiry. The

very fact that such statements are recorded under Section 164 leads to a presumption on the showing of the prosecution itself that these witnesses are weak. At the same time Section 164 is not confined to confessions of the accused. If then the Police take the risk, and their action is not outside the law, it is difficult to see how the Courts can prevent or discourage their so doing. In the present case it is only fair to add that there are no allegations of ill-treatment in the real sense of the term against the police.

12. The next objection is that the prosecution sought and were allowed to treat as hostile their own witnesses when they chose and previous statements were put to them and in re-examination they were really cross-examined.

13. It appears that in some matters considered important by the prosecution, the evidence before the trying Magistrate of certain witnesses differed from their previous statements. The prosecution sought to obtain leave under Section 154 of the Indian Evidence Act to treat these witnesses as hostile. The Magistrate evidently thought that these witnesses were at least equivocating. It was open to him under the law to grant the permission sought. In *Kalachand Sircar v. Queen-Empress*[11] it was held that a witness is not hostile merely because he tells at Sessions a different story from that before the Committing Magistrate. But it is difficult for this Court sitting in revision and not seeing the witnesses or their demeanour to say that the trying Court was wrong. At the best it merely amounted to permission to the prosecution to put leading questions.

14. As to questions about these previous statements, the statements themselves, in virtue of Section 162 as now amended could not be put to them by the prosecution: Emperor v. Vithu Balu . Mr. Velinker frankly and very properly conceded and expressed his regret that in the case of one witness, Ex. 6 (p. 244), he wrongly asked the Magistrate to allow questions on such a statement. But as regards the other witnesses, they were questioned on statements made by them before Mr. Dullabhbhai. Copies of these statements or of those recorded in March by Mr. Kothavalla were apparently not supplied to the defence; but a copy of statements recorded from September onwards both before the police and the Magistrate were so supplied. No authority is shown to entitle the defence to the statements recorded prior to August. From the judgment of the learned Sessions Judge it appears as a matter of fact that there was little or no difference between the statements before August and the statements afterwards.

15. It follows, as regards the statements before Mr. Dullabhbhai, from the strictly legal point of view that they would fall under Sections 145, 147 of the Indian Evidence Act and not under Section 162 of the Code of Criminal Procedure.

16. The propriety of questions on these statements, however, is a more difficult question. On the

one hand the prosecution adduced evidence to prove attempts by or for the accused to tamper with the witnesses. On the other hand it might be argued that the practical result of questions on these statements was to nullify the provisions of Section 162 of the Code of Criminal Procedure; and these provisions have been deliberately enacted by the legislature and are entitled to respect not merely in the letter but also in the spirit so long as the section remains unamended.

17. Cases such as the present, in which one set of statements is recorded before investigation and another after are, however, rare. Under these circumstances and bearing in mind the peculiar difficulty and delicacy of such inquiries, I do not think it necessary to pursue the question of propriety any further.

18. As to the legal consequence, the prosecution sought to discredit the statements of witnesses they considered hostile only on certain points. It is contended for the defence that the legal result was to discredit the evidence in toto of these witnesses including those portions on which the prosecution wished to rely. This view is founded on the dictum of Lord Campbell C.J. in *Faulkner v. Brine*[12] accepted by the Calcutta High Court in cases such as *Khijiruddin Sonar v. Emperor*[13] But as was pointed out in the lower Courts, the view of Lord Campbell is not accepted even in England : *Bradley v. Ricardo*[14] Halsbury's Laws of England, Vol. XIII, p. 600. It does not find support in any provision of the Indian Evidence Act or other enactment in India. With all respect therefore I am unable to say that the total discarding of the evidence of such witnesses can be formulated as a necessary legal result, amounting in fact to falsus in uno, falsus in omnibus. If it cannot be so formulated, then the result must be the same as in other cases; and it must be a matter for the Court on the particular facts in each case to credit or to discredit the different portions of the evidence of each witness as in other cases.

19. The other objections are less serious. On the general question of latitude enough has been said to show the difficulty experienced by both sides. The Magistrate rightly gave each side full opportunity to elaborate its case. To the objection that the reexamination was in the nature of a cross-examination, the reply was that it was an explanation of certain portions of the cross-examination. The difficulty really arose from certain witnesses being treated as hostile. There is no substance in the argument of prejudice to the defence. They apparently desired to reserve cross-examination of each witness after all the witnesses had completed their examination-in-chief. The charge was framed and all the witnesses were recalled and cross-examined. How the defence or the Court would have been any better off by recalling all the witnesses immediately before the charge and again immediately after, I am unable to understand. The forty hearings and the record of 600 pages are mainly taken up by the cross-examination for the defence, which is as exhaustive as it well could be.

20. Again it was suggested that the case should have been adjourned to enable the defence to put

Mr. Macmillan into the box. Mr. Macmillan was on leave in England. He did not return until October 6, 1926. He is not alleged to have any knowledge himself of the charges or to have questioned any of the witnesses. The rumours he might or might not have heard would not be admissible in evidence. The Magistrate was right in declining to adjourn the case for six months to enable the defence to examine Mr. Macmillan.

21. On considering all these objections in detail I arrive at the conclusion that there has been no failure of justice within the meaning of Section 537 of the Code of Criminal Procedure such as to vitiate the trial. Subject to the remarks above, the prosecution and the Magistrate appear to me to have treated the defence very fairly and given the accused every facility. He has fully availed himself of it as shown by the mass of materials and the, time occupied by arguments on his behalf in all the Courts. Even the application for enhancement of sentence has enabled him to argue the case afresh on the merits before us.

22. I pass on to these merits. In so doing it is impossible for me to take up each discrepancy pointed out on his behalf, nor is it necessary to consider each minute point such as the number of carts when the witnesses returned on January 18, 1924, from Athgam to Harangam, or the nature and number of the tents occupied by the accused on January 20, 1924, One Adam Isap Patel of Harangam states that he gave the accused ten tolas of gold on two occasions, once at Athgam on January 28, 1924, in order to get the accused to appoint him Patel of Harangam, and again at Jalalpore on March 1, 1924, in order to get his friend Dayalji appointed Patel of Sardarvel. Certain pieces of corroborative evidence are brought forward. First and on January 18, that the accused's servant Chand beckoned to Adam and took him to the accused and the accused demanded the gold; and Adam on his way back to Harangam informed some of his companions of the accused's demand; and, secondly, that Adam purchased the gold at Bulsar on January 20, and at once took it to the accused's camp. Similarly, in the second case (Sadarvel), that on the night of February 27, Adam saw the accused at Jalalpore at a bungalow called the Khoja's bungalow between 9 and 10 o'clock at night, and asked him to appoint Dayalji, whereupon the accused demanded ten tolas of gold. Secondly, that Adam informed Dayalji, and obtained from him the necessary amount; thirdly, that Adam taking with him the witness Ismail Isaf (Ext. 6) went to Navsari on Saturday, March 1, purchased the ten tolas of gold and returned to the accused's camp and gave it to him some time shortly after 10 o'clock in the morning. The defence is generally that the entire story is a fabrication, the result of a conspiracy on the part of some subordinates of the accused because he had been unduly strict; and more particularly, a defence of alibi that at the particular hours alleged by Adam the accused was not at Athgam on January 20, or at Jalalpore on March 1.

23. The question, therefore, in both the charges is how far Adam's evidence that he gave the

accused the gold on these two occasions is or is not worthy of acceptance.

24. Adam is undoubtedly in law an accomplice, and there is no other eye-witness to the alleged payments. It is even argued by Mr. Thakor that the persons who are said to have accompanied Adam in the purchase of gold are accomplices in law, to say nothing of the witnesses treated as hostile, and therefore unreliable. This is an extreme contention, for which there is no authority. I do not propose to add to the case-law on the subject of accomplices, Their name is legion. Instead of being treated as applications of the law as laid down in Section 114 of the Indian Evidence Act with illustration (b), and the further illustration as to illustration (b), they are taken as adding to or substracting from the law. I accept the enunciation of the law in *Emperor v. Govind Balvant Laghate*[15]

25. It is clear, however, that the single word accomplice may cover various categories. The extent and depth of the taint may vary greatly, The part taken by the accomplice, his interest in minimising his own share at the expense of the accused, the moral element, all these and other factors would gravely affect the total amount of the legal taint. Even in cases such as the present, there is assuredly a difference between a rich man tempting a poor public servant and a public servant presumed to be above corruption extorting money from a subordinate subject to his own power, in order to show him favour. Even in this very case the first charge in which the accused is alleged to have demanded money and the second in which Adam of his own accord went to recommend Dayalji suggest a certain amount of difference. I content myself with holding that in law Adam and Dayalji are the only two accomplices and that the other witnesses are subject to no such taint. The question whether Adam and Dayalji are or are not to be believed must depend on the corroboration of their evidence on what may be termed material points.

26. Without reiterating what has been said in the judgments below, the difficulty, speaking for myself, which I have experienced in appreciating the arguments for the accused is this. It may be there are a number of discrepancies. But the further point which must always be in the mind of the Court is this, what follows from these discrepancies ? Are they the discrepancies of bona fide and truthful witnesses, or are they the discrepancies of false witnesses and conspirators ? In this particular case even when their statements were first recorded by Mr. Kothavalla the witnesses were asked to speak to events over a, year old ; and when they gave evidence before the Magistrate, more than two years had elapsed. Many incidents were such that there would not be any particular reason for the details remaining in the minds of these witnesses. Each witness had undergone four examinations before he came into Court. In Court some were treated as hostile by both sides and examined and cross-examined at great length. Under these circumstances, the simple fact of discrepancy does not suffice. And in a record of this length there always appears to me to be a danger of not seeing the wood for the trees. [His Lordship here discussed the evidence

in the case.] The result is that the lower Courts were, in my opinion, right in finding the accused guilty.

27. There remains the difficult question of sentence. The main ground on which enhancement is sought is that these are cases very difficult to detect, and false and reckless allegations of conspiracy, perjury and forgery have been made by the accused. As regards the latter ground, although it might in certain cases be an element in so far as it is a part of the defence, I would be reluctant to allow the sentence to be aggravated by it. The single point taken by the learned Magistrate is the ruin pecuniary and social of the accused which the sentence involves. From the point of view of the individual accused that is no doubt correct. But, on the other hand, there are certain other elements, public and more important, which it is impossible to ignore. In these cases it is not merely a question of the amount that is taken; nor are they on a par with the case of a breach of trust by a private employee. The accused occupied an official position, and a position of public trust. The higher that position, the more serious is the breach, and the heavier, in my opinion, should be the sentence. The law must not be respecter of persons; and a respectable person as such may not escape with a lesser sentence. In the present case it is not for us to ask ourselves why this application for enhancement has been made. It might be that but for the acquittal on the third charge it might not have been made. But however that may be, I am constrained, reluctantly yet clearly, to the conclusion that there are certain points in the case which justify this application. The record leaves small doubt that since the accused came to this district and was entrusted as Deputy Collector with the charge of the southern division, he embarked on a career of unblushing corruption. I am unable to make the distinction argued on his behalf between Deputy Collectors not acting in their magisterial capacity and Subordinate Judges. In these cases the wrong is not confined to the person who paid the bribe ; the wrong is to the Government and the public. It sullies and makes a breach in the tradition of probity which other public servants have built up with years of labour. It affords a handle to the unthinking and the hostile against the administration and the particular service to which he belongs. Under these circumstances after making every allowance for the various considerations put forward on his behalf, I am of opinion that the sentences passed are inadequate. I would enhance them on each of the two charges as follows; six months' rigorous imprisonment and a fine of Rs. 500, in default two months further rigorous imprisonment, the sentences to be consecutive, and the sentences of simple imprisonment undergone being considered as part of these sentences.

Crump, J.

28. The exhaustive judgment which my learned brother has just delivered saves me the task of dealing with the various points that have arisen in this case at any length. So far as the merits are concerned I agree entirely with the conclusions that he has reached. Speaking for myself, dealing

as we are with a case under Section 439, I should be content to express my agreement with the conclusions arrived at by the two Courts below who have dealt with the facts of these two charges in full and adequate judgments. But if it is necessary to say more than that, then all that is necessary to say has been said in the judgment which has just been delivered, and I do not propose to add anything to it. So far as the questions of law are concerned which have been raised in this case I desire to make a few remarks. First as to the order under Section 14 of the Code of Criminal Procedure. The words used in the order are as follows: "To try the case relating to the prosecution of Mr. J.A.R. Cama, Deputy Collector under suspension." Those words must be interpreted in the light of the facts in relation to which they are used, The accused was suspended on June 25, 1924, and on August 21, 1924, his prosecution was sanctioned under Section 197 of the Code of Criminal Procedure. The order sanctioning his prosecution dealt with all four cases with which we are concerned in the present proceedings, and it is, in my opinion, reasonable to suppose that the words which I have quoted from the order under Section 14 are used with reference to that which had gone before, and are meant to cover the four charges for which this prosecution had been sanctioned by the Government. That is, in my opinion, the reasonable interpretation of those words, and I may point out that the word 'case', so far as I am aware, has no strict technical meaning, and is used in a compendious sense as covering all charges which may arise against an accused person. The order, I agree, is not happily expressed, but I think that its words, fairly interpreted, are wide enough to confer upon the Magistrate jurisdiction to try all those charges for which the sanction of Government had already been given.

29. Then as regards the question of sanction under Section 197 of the Code of Criminal Procedure the fact is that the sanction is expressed to be for an offence committed in the month of February, and in the margin of the sanction the date given is February 29. What happened has been explained in my learned brother's judgment. Now under Section 197 the local Government is not in my judgment bound to state the precise day on which the offence for which sanction is given has taken place. They have elected to do so here, and I think unwisely, but in all other respects the offence for which the accused has been tried is in every detail the offence for which the sanction was given, and the true light in which to regard the matter is this. The Government in sanctioning the prosecution of the accused erroneously described it as having taken place on February 29. When that error was discovered, and it was an error that it would perhaps have been difficult to foresee arising as it did from a discrepancy in the Hindu and English calendar, they issued what was not in truth a fresh sanction, but was no more than an erratum correcting the mistake in the date in the sanction they had already given. That is the light in which I look upon this matter, and it appears to me that there was throughout these proceedings one offence and one only for which the prosecution of the accused was directed under Section 197, and that therefore even apart from the issue of that erratum, it would have been competent to the Magistrate,

holding that the offence took place on March 1 and not on February 29, to have tried the case upon that understanding without any further sanction from the local Government.

30. Then as regards the statements under Section 162 I wish to say that I agree with the view expressed by my learned brother that the statements recorded by Mr. Kothavalla in the confidential enquiry are not within the scope of Section 155. With reference to that I would wish to point out what is Mr. Kothavalla's position with reference to this case. He is an officer of the Criminal Investigation Department and not an officer in charge of a police station within the meaning of Section 154, and the suggestion that as soon as he received information from the District Magistrate he must be held to have been empowered to investigate by an order under Section 155 appears to me to miss the mark and overlook that which really took place according to the evidence. What the District Magistrate did was not to direct an enquiry under Section 155. He asked an officer of the Criminal Investigation Department to make confidential enquiries for the purpose of ascertaining whether any grounds existed for instituting criminal proceedings. That being so, it is impossible to argue that the various statements recorded before the order under Section 155 was issued by Mr. Jayakar falls under Section 162 of the Code. Then as regards the misuse of the statements under Section 162, that misuse is now conceded, but it seems to me impossible to hold that it is sufficient to vitiate the trial. The point in my judgment is covered by Section 537 of the Code of Criminal Procedure, and in the absence of any prejudice to the accused, and there was no prejudice as my learned brother has explained, there is no basis on which sitting as a Court of revision we can set aside the proceedings of the Courts below. That is all that I wish to say as regards the questions of law arising in this case, and I will only add a few remarks as regards the enhancement of the sentence.

31. It is with much reluctance that I consent to the exercise of our powers under Section 439 to enhance the sentences in these cases, but I do so because I conceive that it is our plain duty to do so. The accused held a responsible public position and exercised wide powers. He abused that position, and he abused it in a way which shows that he was disposed to corruption when an opportunity offered itself. In such a case the sentence passed by the Magistrate is not adequate to the gravity of the offence. It is impossible when such offences as this come to light and when we are asked to mark out sense of their gravity that we should abstain from doing so. And thus though I say I do it with reluctance I conceive it to be my duty to substitute for the sentence passed by the Magistrate the sentence which my learned brother has set out in his judgment. I will only add this that in estimating that sentence of rigorous imprisonment we direct that any sentence of simple imprisonment which the accused has already undergone should be regarded as having been rigorous imprisonment and deducted from the term now imposed.

Cases Referred.

1(1893) I.L.R. 10 Mad. 468
2(1918) I.L.R. 43 Bom. 147, 153, s.c. 20 Bom. L.R. 607
3(1909) 13 C.W.N. 1062, 1065
4(1924) I.L.R. 52 Cal. 159
5(1924) I.L.R. 52 Cal. 499
6(1919) I.L.R. 46 Cal. 895
7(1922) 16 Sind L.R. 255
8(1894) I.L.R. 19 Bom. 51, 69, 70
9(1899) I.L.R. 27 Cal. 295
10(1902) I.L.R. 29 Cal. 483
11(1886) I.L.R. 13 Cal. 53
12(1838) 1 F. & F. 254
13(1925) I.L.R. 53 Cal. 372
14(1831) 8 Bing. 57
15(1916) 18 Bom. L.R. 266, 275