

1939

Present : Hearne J.

SOLICITOR-GENERAL v. ALWIS

[IN REVISION.]

M. C. Colombo, 38,390.

Sentence—Application for enhancement—Discretion of Magistrate regarding sentence—Revision by Supreme Court—Application of Criminal Procedure Code, s. 325 (Cap. 16).

On an application for enhancement of a sentence passed by a Magistrate the Supreme Court will interfere only when the sentence passed is manifestly inadequate and not merely on the ground that it would itself have passed a heavier sentence.

It will not interfere with the discretion of a Magistrate unless it appears that it was improperly exercised.

Where it is proposed to apply section 325 of the Criminal Procedure Code regard must be had to considerations personal to the accused, the nature and the circumstances of his crime.

THIS was an application by the Solicitor-General to enhance the sentence passed on the accused—

D. Jansze, C.C., in support.

Colvin R. de Silva (with him *M. M. Kumarakulasingham*), for the accused, respondent.

Cur. adv. vult.

November 22, 1939. HEARNE J.—

The first accused and the second accused, the former of whom is here the respondent, were convicted of cheating Mr. A. A. Raymond by dishonestly inducing him to deliver property valued at Rs. 216.84 and of using as genuine a document known to be forged.

The first accused was dealt with under the provision of section 325 of the Criminal Procedure Code. He was bound over in a sum of Rs. 250 to be of good behaviour for a period of one year and to come up for judgment when called upon.

The Solicitor-General has moved this Court to pass a sentence of imprisonment on the respondent. The Magistrate acted under section 325 (2) of the Code instead of section 325 (1), but this technicality would not lead me to accede to the application if it otherwise appears to be an inappropriate one.

No cases have been brought to my notice indicating the principle upon which this Court has acted in dealing with similar applications. It has, however, been held that on an application for enhancement of sentence a revisional Court will interfere only when the sentence passed was manifestly inadequate and not merely on the ground that it would itself have passed a heavier sentence. Analogously this Court would not interfere with the discretion vested in a Magistrate by law if it would itself not have exercised the discretion but only if it appears that it was improperly exercised.

The only argument addressed to me was that the order of the Magistrate was not sufficiently deterrent, not of further, similar, criminal activities on the part of the respondent but on the part of other members of the public.

If this argument were sound it could be urged in almost every case in which a Magistrate decides to use his discretion, certainly in every case where, but for the provisions of section 325, a Magistrate would be obliged to pass a sentence of imprisonment.

I have consulted Indian decisions on the corresponding section of the Criminal Code of India, and the principle I extract from those decisions is that the Magistrate is required to look at the matter primarily in the interests of the accused.

Having regard to the object of the section this appears to be only common sense. The benefit of the section should not be indiscriminately applied, but when it is proposed to be applied regard must be had to considerations, if I may put it in this way, personal to the accused. As I read the section it does not mean that it is essential that the accused must be young, or the offence must be trivial, it merely indicates the lines on which the discretion of a Court is to be exercised, and those lines, it is important to note, relate to the accused and the circumstances and nature of his crime.

In the present case the Magistrate addressed his mind to the youth of the respondent, to the fact that he is a first offender, and he took the view that his partner in crime, a reconvicted criminal much older than he, had probably persuaded him to participate in an undertaking which the former had planned.

I am not prepared to say the exercise by the Magistrate of his discretion was so improper that interference by this Court is desirable.

I dismiss the application.

Application refused.

