

PART B.—ENHANCED SENTENCES

1. Under section 75 of the Indian Penal Code, a person convicted a second time of an offence punishable under Chapter XII or Chapter XVII of the Code, with three years' imprisonment and upwards; is liable to a greatly enhanced sentence.

Enhanced punishment under Section 75, Indian Penal Code.

2. This of course does not increase the competence of the court trying the offender. Even though section 348 of the Code seems to provide that the case can be tried by the magistrate if he is competent to try it or may be sent to a magistrate invested with powers under section 30 of the Code, it would be safer, in view of the amendments of section 30 by Act No. 26 of 1955, to commit such cases to the Court of Sessions as the accused is liable on subsequent conviction to a sentence of imprisonment for life or imprisonment of either description for a term which may extend to ten years. A provision is contained in section 347 which enables a commitment to be made to the court of Sessions at any stage before judgment is signed.

Procedure for Magistrates not competent to award enhanced punishment.

3. Although section 75 of the Indian Penal Code makes a previous convict in certain classes of cases liable to enhanced punishment, it is, of course, not obligatory to impose an enhanced sentence in every case of this description.

Enhanced punishment not obligatory.

Ordinarily cases of petty nature should not be made the basis for an enhanced punishment, unless the nature, number and sequence of previous convictions and the sentences previously undergone clearly show the necessity of enhanced punishment. Similarly; very old convictions (e.g., when the offence is committed, say, more than five years after the last release of the offender from Jail) should not ordinarily be made a ground for imposing an enhanced penalty under this section in the absence of special reasons.

Cases of organised crime stand on a different footing and where the offence under trial and the previous offences are of this description greater weight must be attached to them.

The general principle to be borne in mind is that section 75 is meant to be used as a deterrent only when the punishment provided for the offence itself is considered to be inadequate in view of the antecedents of the offender. The judgments in the previous cases should be referred to freely in order to ascertain the real character of the offender, and the section should not be resorted to unless the previous convictions indicate a criminal habit or instinct which needs to be checked by a punishment higher than that provided for the offence.

It should also be remembered that a moderate sentence coupled with an order under section 565, Criminal Procedure Code, or an order of restriction under the Restriction of Habitual Offenders Act is generally a better way of dealing with habitual offenders than the imposition of long terms of imprisonment.

Previous conviction for attempts to commit an offence not covered by Section 75, Indian Penal Code.

4. It should be noted that previous convictions for attempts to commit offences specified in section 75; or a security order under section 110, Criminal Procedure Code, do not bring an offender within the scope of section 75, Indian Penal Code.

Imprisonment under Section 75, Indian Penal Code.

5. In awarding sentences of imprisonment under section 75 of the Indian Penal Code. Courts should bear in mind that the provisions of this section are subject to those of sections 31, 32 and 34 of the Code of Criminal Procedure.

Action to be taken by Magistrate of 2nd or 3rd Class when he cannot award adequate punishment.

6. Section 349 gives a Magistrate of the 2nd or 3rd class the means of securing the proper punishment of an accused when he finds, in the course of the trial, that the maximum sentence which he is empowered to inflict would be insufficient. At the same time, in resorting to this section, it must be remembered that when the accused appears to be habitual offender he must ordinarily be dealt with under the provisions of section 348 and be committed to the Court of Sessions,

Duty of the Police to prove previous conviction. Discovery of previous conviction after judgment has been pronounced.

7. It is the duty of the police, in conducting the investigation to take proper steps to establish the identity of an accused person and to obtain and produce evidence of previous convictions against him. The attention of Criminal Courts is directed to the decision of the Chief Court in the case *Empress Versus Sham*

Singh, reported as Criminal Judgment No. 36 in the Punjab Record of 1884, and especially to the remarks of Mr. Justice Plowden at page 70 of the Record, with regard to the duties of the Court and of the police in this matter. It will be seen that the discovery, subsequent to sentence, that the prisoner has been previously convicted, but that this has escaped notice on account of a change of name, is not in itself a good ground for interference on revision.

When the police make a request that the pronouncement of judgment may be postponed on the ground that the result of the search slip in the case has not been received by them; the Courts should ordinarily adjourn the case for a reasonable time. It results in a mis-carriage of justice when, after the sentence has been passed, it is discovered that the accused had previous convictions and was liable on that account to an enhanced sentence.

8. In Punjab Government Circular No, 43-1077: dated the 19th July, 1870, the Criminal Courts of the State were instructed to enter any previous conviction or convictions of a prisoner upon the warrant committing him to jail, and the attention of all Courts is directed to these instructions. In the form of warrant of commitment prescribed for use under the Code of Criminal Procedure, provision has been made for mention of the fact that the convict has been previously convicted, when one or more previous convictions have been proved against him at his trial, and for the entry of the particulars of the previous convictions in a separate statement, which should be attached to the warrant of commitment in such cases.

Previous convictions to be noted on the warrant of commitment and in a separate Statement. Note on the warrant when the identity of the prisoner has not been proved or he declines to give an account of himself.

It is further directed at the suggestion of the Inspector-General of Police, and with the sanction of the State Government, that Courts, when committing a prisoner to jail, will enter a note in red ink on the warrant of commitment, in cases where the identity of the prisoner has not been satisfactorily ascertained, or he declines to give an account of himself.