

The State Vs. Abdul Mazid and ors.

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SooperKanoon Citation : sooperkanoon.com/130361

Court : Guwahati

Decided On : Apr-19-1961

Judge : H. Deka, C.J. and G. Mehrotra, J.

Appellant : The State

Respondent : Abdul Mazid and ors.

Judgement :

H. Deka, C.J.

1. This is an application on behalf of the State purported to be one under Section 439 of the Code of Criminal Procedure against an order of the District Magistrate, Lakhimpur at Dibrugarh, dated 11th January 1961 in an application under Section 435 of the Code of Criminal Procedure.

2. It appears that the police during investigation applied to the District Magistrate to direct the accused persons to be present in a test identification parade proposed to be held by the Police with the assistance of a Magistrate, to which the learned District Magistrate agreed and passed an order to that effect on 3rd of May 1960. It was against this order that the accused persons moved the Sessions Judge contending that it was not within the powers of the Police or the Magistrate to compel the appearance of the accused persons at a test identification parade unless they so desired. The learned Sessions Judge expressed his opinion in the following words:

If they (the accused) refuse to attend the parade I do not see how the parade can be held. It is not for me to anticipate what the Magistrate will do if the accused refuse to attend the parade. If on such refusal the Magistrate takes any step not warranted by law, the petitioners then may move the superior court. The application at this stage is premature and therefore rejected.

The accused persons, as it appears, produced tills order before the Additional District Magistrate and on 11th October, 1960 the learned Additional District Magistrate, Mr. S. Rajkuraar, accepted the view expressed by the learned Sessions Judge that there were no provisions to compel one to appear at the test identification parade and as the accused persons were not co-operating, no test identification parade can be held. Against this order the prosecution made an application to the District Magistrate for referring the matter to the High Court for quashing this order of the Additional District Magistrate, and the present application is the result thereof.

3. In our view, we need not express any opinion now as to whether the accused persons are protected or not, but the order of the learned Additional District Magistrate would go to show that the accused persons were not willing to be present at the test identification parade and consequently at a later stage they would be debarred from raising the plea that no test identification parade was held by the prosecution, or that the identification at the court would be defective or inadequate for the purpose of identification of the accused.

4. Another factor is that a proceeding under Section 435 or 439 Criminal Procedure Code is contemplated after the accused persons are sent up and a proceeding against a set of persons is pending in a court. These sections are not meant to be applied for the purpose of helping the police in the matter of investigation or holding a test identification parade or the like. In this view, we dismiss the application and the records if called for may be sent down at once and the trial expedited.

G. Mehrotra, J.

5. I agree.

