

Emperor Vs. Jina Badhar

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Court : Mumbai

Decided On : Feb-01-1912

Reported in : (1912)14BOMLR163

Judge : Chandavarkar and ;Batchelor, JJ.

Appeal No. : Criminal application for Revision No. 322 of 1911

Appellant : Emperor

Respondent : Jina Badhar

Judgement :

Chandavarkar, J.

1. Neither the proclamation nor any copy is forthcoming in this case to satisfy the Court that either the proclamation was issued, or if it was issued, that any period of time was prescribed thereby. There were, no doubt, some materials upon the record to show that a proclamation was perhaps issued. But those materials afford ground for mere conjecture, but no certainty which is essential in a criminal case where the Court is asked to confiscate private property.

2. We think that Magistrates ought to take particular care in such cases to preserve proclamations and the record must be so clear as to satisfy the Court that all the legal formalities duly observed. We think that in this case the evidence

is no sufficient to show that the formalities were observed by the Court. On that ground the rule must be made absolute and the order of the Court below confiscating the property must be set aside and the property ordered to be returned to the petitioner. We may refer in support of our view to *Queen Empress v. Subbarayar* ILR (1895) Mad. 3.

Batchelor, J.

3. I agree. It seems to me that in consequence of the lower Court's neglect to observe the imperative provisions of the criminal law we have no materials before us on which we can be satisfied that a legal proclamation was ever legally issued. All that the learned Government Pleader can point to is the statement of one of the accused persons that a proclamation of some undescribed sort was at some unspecified time issued. But it appears to me clear that a vague admission of this kind does not supply us with material enough to confirm the order which has been made.

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