

Emperor Vs. Imam Hasan

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Court : Mumbai

Decided On : Feb-08-1923

Reported in : (1923)25BOMLR286; 84Ind.Cas.652

Judge : Norman Macleod, Kt., C.J. and ;Crump, J.

Appeal No. : Criminal Appeal No. 572 of 1922

Appellant : Emperor

Respondent : imam Hasan

Judgement :

Norman Macleod, Kt., C.J.

1. In this case the accused was found guilty by the Sessions Judge of two offences under Section 302, Indian Penal Code, and sentenced for each offence to transportation for life.

2. On appeal, we came to the conclusion that the evidence showed that the man was not of sound mind at the time when he committed these acts in the sense either that he knew the nature of his acts, or that he knew that they were wrong or Contrary to law. We held that he was entitled to an acquittal on the ground of insanity. Under Section 471, Criminal Procedure Code, we directed that he should be kept in safe custody in the place where he was then confined, and that the papers of the case should be sent to the Local Government to pass such orders as

might to them seem expedient. We followed the procedure laid down in *Emperor v. Somya Hirya Mahar* : (1918)20BOMLR629 .

3. We have since received a letter from Government, dated January 12, 1923, pointing out to us that under Section 471, Criminal Procedure Code, as amended by Act X of 1914, it is for the High Court to pass the necessary orders, or direct the Sessions Judge, Dharwar to pass them under Government Resolution, Home Department, No. 8512, dated August 30, 1921.

4. In the above-mentioned case it appeared to the Court that the omission of the words 'and shall report the case for the orders of the Local Government' in Section 471, Criminal Procedure Code, directed by Act X of 1914, made no substantial change in the law relating to lunatics under the Code, and that the powers of the Court and of the Government were not altered by the repeal of those words, But as the section now contains no direction that the Court should report the case for the orders of the Local Government, with all respect, I cannot see any necessity why the Courts should continue to follow the old procedure.

5. Apart from the question whether as a matter of fact the Courts have now any power to make such a report, it seems to me that the intention of the Legislature, when amending Section 471 by leaving out those words, was that the Court, in a case where it has been found that an offence has been committed by a lunatic, should confine itself to making an order that he should be kept in safe custody in such place and manner as the Court thinks fit. Then it is for the Government under their own powers to decide the future fate of the person concerned. Instructions have been given to Judicial and Executive officers in dealing with criminal lunatics, by a Government Resolution of Augusts 30, 1921, in the Home Department, No. 8512 ; and the officers concerned will no doubt follow those instructions as soon as an order is made by the Court under Section 471, Criminal Procedure Code.

6. Therefore we set aside the order we passed on the previous occasion, dated November 30, 1922, and we direct that the accused should be kept in safe custody in the place where he is now kept.

Crump, J.

7. I agree that in view of the amendment of Section 471, Criminal Procedure Code, there is now no longer any necessity for a Court which acquits a person on the ground of insanity to report the case for the orders of the Local Government. Clauses (2) and (3) of that section were repealed by Act IV of 1912, mainly with the object of relieving the Local Government from the necessity of dealing with the cases of such persons, But after that was done, it was found that the last twelve words in the first clause of Section 471 had remained unrepealed, and the position was that the Courts were bound to report the case for the orders of the Local Government, while the Local Government had ceased to have power to act on such report. Therefore the last twelve words in Section 471, Clause (1), were repealed by Act X of 1914. The position is now (in my opinion) clear, and there is no longer any ground for supposing that any report is necessary in such cases. With all deference I am unable to agree with the decision in *Emperor v. Somya Hirya Mahar* : (1918)20BOMLR629 , in so far as it lays down that there has been no alteration in the law.

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