

Emperor Vs. C.W. King

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Court : Mumbai

Decided On : Feb-13-1912

Reported in : (1912)14BOMLR236

Judge : Dinsha Davar, J.

Appellant : Emperor

Respondent : C.W. King

Judgement :

Dinsha Davar, J.

1. With reference to Mr. Inverarity's application to dispense with the attendance of the third accused from the Court during the trial, I have now had the advantage of seeing the learned Chief Justice and the other Judges who presided at the recent Tribunal which tried the Nasik Conspiracy case, and I have ascertained that that Court dispensed with the attendance of one of the accused, who was suffering from appendicitis, under the powers which they held were by implication conferred on the High Court by Section 353 of the Criminal Procedure Code. That is a precedent which I have no hesitation in following in this case. Section 205 of the Criminal Procedure Code empowers a Magistrate to dispense with the attendance of the accused in cases where he issues a summons and it seems to me that it could not have been the policy of the Legislature that the High Court should not have similar powers in all proper cases.

2. Major Gordon Tucker has stated in his evidence that it would be unsafe to bring the third accused backwards and forwards into Court, that he is suffering from dilatation and fatty degeneration of the heart, accompanied by aneurism, and that it is dangerous to his life that he should be brought into Court and kept here during the trial which promises to extend over many days' hearing. This evidence is not challenged by any cross-examination.

3. Under these circumstances I will dispense with the attendance of the third accused in Court till the further order of this Court. In the meanwhile all prosecution witnesses who have to identify the third accused must do so now before he is removed from the Court.

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