

Emperor Vs. Nandbasappa Basappa

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Court : Mumbai

Decided On : Mar-20-1912

Reported in : (1912)14BOMLR360

Judge : Batchelor and ;Heaton, JJ.

Appeal No. : Criminal Application for Revision No. 12 of 1912

Appellant : Emperor

Respondent : Nandbasappa Basappa

Judgement :

Batchelor, J.

1. The petitioners here have been convicted of the offence of rioting under Section 147, Indian Penal Code, and have been sentenced each to a small fine. They apply in revision on the ground that a serious illegality was committed by the learned Second Class Magistrate, before whom this trial was heard. Fortunately- there is no dispute as to the facts under, lying this contention. These facts are: that after the petitioners had been called upon to open their defence several witnesses were called by them. Eight of those witnesses' depositions were recorded by the learned Magistrate, though in regard to six of them, it is clear, that their story has been seriously abbreviated, possibly mutilated. However that may be, when the Magistrate had exhausted these witnesses, it would seem that he had also

exhausted his own patience. For, concerning five other witnesses, who remained to be examined, he writes only: 'all these people repeat the defence story; I shall dispense with their evidence as unnecessary.' It does not appear upon what grounds the learned Magistrate stated that these people, who had never been heard, would, if they were heard, repeat the defence story. And the Magistrate should have borne 'in mind that although the evidence of these witnesses may have appeared to him to be unnecessary, those witnesses' attendance was needed, not in the Magistrate's interest, but in the interests of the accused persons. If, therefore, the accused persons regarded them as necessary witnesses, it was not for the Magistrate to pronounce them to be unnecessary, before he had heard them. It is quite clear that procedure such as this cuts at the very root of the fairness of a criminal trial. The case might have been different if the learned Magistrate had brought himself within the provisions of Section 257 of the Criminal Procedure Code, which empowers a Magistrate to decline to issue process where he considers that application for such process is made for the purpose of vexation or delay or for defeating the ends of justice. Where the Magistrate so considers and records in writing his ground for so considering, it is competent to him to decline to enforce the attendance of witnesses. In this case, however, the Magistrate has not brought himself or his procedure within the provisions of 3.257. And there is no justification for his action in refusing to hear the witnesses whom the defence desired to call. I think, therefore, that the petitioners are entitled to have their conviction set aside.

2. Mr. Kelkar, who appears on the other side, has urged that if the conviction be set aside a retrial ought to be ordered. But having regard to the triviality of the offence, said to have been committed by these accused persons, as disclosed by the punishment which the Magistrate saw fit to award, and having regard also to the harassment, which these proceedings, protracted for such a long period, must have already caused to the petitioners, I think it unnecessary that a retrial should be ordered. The fines, if paid, to be refunded.

Heaton, J.

3. I concur.

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