

Emperor Vs. Narayan Keshav Devasthali

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Court : Mumbai

Decided On : Mar-01-1928

Reported in : (1928)30BOMLR651

Judge : Fawcett and; Mirza, JJ.

Appeal No. : Criminal Application for Revision No. 450 of 1927

Appellant : Emperor

Respondent : Narayan Keshav Devasthali

Disposition : Application dismissed

Judgement :

Fawcett, J.

1. Three points have been raised in this application. The first is that the accused were not properly examined in accordance with the provisions of Section 342, Criminal Procedure Code, This objection was based upon a certified copy of the roznama in the case. But admittedly the record now shows that there was an examination of the accused on August 9, 1927, after the further prosecution evidence had been taken, so that that objection no longer survives.

2. The second point is that the appellate Court directed additional evidence to be taken under Section 428, Criminal Procedure Code, in the presence of the

accused, and that the provisions of Section 342, Criminal Procedure Code, were not observed in respect of that additional evidence. In our opinion, Section 342, Criminal Procedure Code, does not apply to evidence taken under Section 428, Criminal Procedure Code, In itself, Section 34.2 applies only to a case of an original trial. If it is to apply to any other case, then there should be some direct provision of the Code making it go applicable. Admittedly Section 428, Criminal Procedure Code, contains no such provision, although there is a reference in Sub-section (4) to Chapter XXV, in which Chapter Section 342 does not find place. The mere fact that Chapter XXIV contains general provisions regarding inquiries is not a good ground for saying that it should be placed on the same footing as Chapter XXV, which is expressly referred to. Then Sub-section (2) of Section 428 merely requires the additional evidence to be certified, and directs that the appellate Court shall thereupon proceed to dispose of the appeal. If it was the intention of the Legislature that the accused should be examined about the additional evidence, that would have been a proper place to have inserted a direct provision accordingly. Finally, Sub-section (3) shows that the additional evidence can be taken in the absence of the accused, because the appellate Court is given power to direct that he need not be present when additional evidence is taken, Therefore, we think that Section 312, Criminal Procedure Code, does not apply There might of course be cases where the accused could properly be questioned by the Magistrate in regard to additional evidence taken by him under the directions of the appellate Court; but if he does not do so there is no omission of anything required by law. We agree with the ruling to the same effect in Saiyid Mohiuddin v. King-Emperor I.L.R. (1925) Pat. 488. This objection, therefore, fails.

3. The third ground is that the accused acted in the bona fide assertion of a supposed right to the land containing the trees which were cut down, and in respect of which they have been convicted of theft. Against them is the concurrent finding of both Courts that their claim was a mere colorable pretence and not a bona fide one. We have been asked to consider certain evidence to the contrary. But that evidence has been fully considered by the lower appellate Court, and the point is really one of a question of fact, which we could not properly decide without going fully into the merits of the case.

4. We see no sufficient reason to interfere in revision and dismiss the application.

Mirza, J.

5. I agree.

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