

**In Re: Abdul Rahiman**

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**SooperKanoon Citation :** [sooperkanoon.com/332538](http://sooperkanoon.com/332538)

**Court :** Mumbai

**Decided On :** Dec-06-1916

**Reported in :** (1918)20BOMLR124

**Judge :** Heaton and ;Shah, JJ.

**Appeal No. :** Criminal Application for Revision No. 344 of 1917

**Appellant :** In Re: Abdul Rahiman

**Judgement :**

**Heaton, J.**

1. This is a case in which a Magistrate, when making an order for the adjournment of the case he was trying, made also an order that the accused should pay the day's costs of the complainant, which he assessed at Rs. 30. We are not prepared to say that this order was illegal. It will be seen from the case of Mathura Prasad v. Basant Lal I.L.R. (1905) All. 207 that the Allahabad High Court has come to the conclusion that such an order is permitted by the terms of Section 344 of the Code of Criminal Procedure. The same conclusion, we gather, has been reached by the High Courts of Calcutta and Madras. But the Criminal Procedure Code does not make special provision for costs in the course of a criminal trial, and one thing seems to me to be perfectly clear, and it is this: that if Section 344 is to be regarded as justifying an order as to costs, it can only be where the circumstances are exceptional and where for some reason or another the ordinary every-day

method of conducting criminal cases must be departed from. I say this because I feel sure that if our criminal law intended orders as to costs to be a normal part of our criminal proceedings, it would be clearly provided for. We should not be compelled to seek for authority for making such an order in a Section like 344 and in such words as those in which that section is framed. Taking it, therefore, as I do take it, that our common every-day practice, which is in accordance with the intentions of the Code, does not contemplate an order as to costs ; then one has to see, whether, when an order as to costs has been made, the circumstances are so peculiar as to justify the order. In this case they do not seem to me to be in any way peculiar. It is an ordinary case, one with which we are very familiar. A party applies for a transfer and then applies for an adjournment of the case. Such an adjournment is commonly granted, and in certain cases, as the law provides, must be granted.

2. I think, therefore, that the order as to costs in this case should be set aside. The amount, if paid, should be refunded.

3. I quite realize the inconvenience that arises when one party makes an application for a transfer or for an adjournment without giving previous notice to the other side. Personally I should be very pleased to see that the legal profession recognized the desirability of always giving such notice.

Shah J.

4. I agree.

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