

Emperor Vs. Vinayak Narayan Arte

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Court : Mumbai

Decided On : Jul-23-1914

Reported in : AIR1914Bom217; (1914)16BOMLR598

Judge : Heaton and ;Shah, JJ.

Appeal No. : Criminal Reference No. 31 of 1914

Appellant : Emperor

Respondent : Vinayak Narayan Arte

Judgement :

Shah, J.

1. The facts that have given rise to this reference are briefly these : The accused was in the first instance tried by a Second Class Magistrate for offences punishable under Sections 336 and 452, Indian Penal Code. He sent up the proceedings under Section 349 of the Criminal Procedure Code to the Sub-divisional Magistrate, Kolaba, Northern Division, as he thought that he could not pass a sentence sufficiently severe against the accused. The Sub-divisional Magistrate, instead of disposing of the matter himself, transferred the case to a First Class Magistrate, and the First Class Magistrate committed the accused to the Court of Session. The Additional Sessions Judge of Thana has made this reference pointing out that in his opinion the commitment by the First Class

Magistrate is illegal.

2. Having regard to the special character of the provisions of Section 349 I am of opinion that it is only the District Magistrate or the Sub-divisional Magistrate who has jurisdiction to exercise the powers mentioned in paragraph 2 of Section 349, i. e., to pass much judgment, sentence or order in the case as he thinks fit. The Sub-divisional Magistrate in this case has apparen¹ly acted under Section 528 of the Criminal Procedure Code, which, in my opinion, has no application to proceedings submitted to him by a Second Class Magistrate under Section 349 ;and in the argument before us it is not suggested that the powers of transfer under Section 528 could justify the transfer of the proceedings to the First Class Magistrate in this case.

3. Having regard to the powers of a First Class Magistrate and of a Sub-divisional Magistrate as specified in Schedule III and to Section 530, Clause (I), of the Code, I feel fortified in the view I take of the section that the jurisdiction to deal with the proceedings under Section 349 is conferred upon District Magistrates and Sub-divisional Magistrates and upon no other Magistrates. Even assuming that the Sub-divisional Magistrate had the power to transfer these proceedings to the First Class Magistrate, he could not transfer the jurisdiction which was conferred upon him by the section and not upon the First Class Magistrate. It seems to me that this is not a question of the power of the Sub-divisional Magistrate to transfer any proceedings before him but a question of jurisdiction.

4. The Government Pleader has sought to support the order of commitment by relying upon Section 532, Criminal Procedure Code. But it is quite clear that the section has no application to the facts of this case, in which the proceedings are supposed to be wholly without jurisdiction. I think, therefore, that the proceedings before the First Class Magistrate are without jurisdiction. The result is that the order of commitment is get aside and the proceedings are sent back to the Sub-divisional Magistrate, to whom they were, in the first instance submitted by the Second Class Magistrate under Section 349, to be disposed of by him according to law. We are indebted to Mr. Manubhai for having argued the reference on behalf of the accused at our request.

Heaton, J.

5. I concur. I do not feel any doubt now (at one time I did), that Section 349 confers special powers, or, what may be called, a special jurisdiction, and confers it only on District and Sub-divisional Magistrates. That being so, every case which is referred under Section 349 must be disposed of by a Magistrate who has that special jurisdiction. In this particular case the matter was disposed of by a Magistrate who had not this jurisdiction, and I concur in the proposed order.

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