

**Emperor Vs. Mahamadbuksh Karimbuksh**

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**SooperKanoon Citation :** [sooperkanoon.com/335167](http://sooperkanoon.com/335167)

**Court :** Mumbai

**Decided On :** Jun-15-1906

**Reported in :** (1906)8BOMLR507

**Judge :** Batty and ;Aston, JJ.

**Appeal No. :** Criminal Appeal No. 116 of 1906

**Appellant :** Emperor

**Respondent :** Mahamadbuksh Karimbuksh

**Disposition :** Appeal dismissed

**Judgement :**

**Aston, J.**

1. This appeal has been preferred by nine persons convicted at a trial conducted by the Sessions Judge, Belgaum, with the aid of a Jury of the offence of dacoity, Section 395, Indian Penal Code, and sentenced each to seven years rigorous imprisonment.

2. A report has been called for from the Sessions Judge on the following points: -

(1) Whether any and what objection was taken to the commitment on the ground that the proviso to Section 188, Criminal Procedure Code, had not been observed,

and if so, at what stage of the trial and under what circumstances was the objection taken.

(2) Did the Sessions Judge accept the commitment under Section 532, Criminal Procedure Code, and if so, was this done after perusal of the proceedings as required by that section And did the Sessions Judge consider the accused had not been injured by the commitment ?

(3) Are there any further remarks or explanation that the Sessions Judge desires to make or furnish in reference to the points raised ?

3. The Sessions Judge has reported that no objection with respect to the Political Agent's certificate was taken during the first seven days of the trial; and as to the second point he considered the commitment regular and that no application was made to him to say whether the commitment was regular or irregular and if the latter whether he would accept it under Section 532, Criminal Procedure Code. He further says that even if the application had been made he should certainly have accepted the commitment under that section, even if that commitment was irregular, but that the commitment appeared regular and that he considered that the accused had not been in any way injured by the commitment and that the objection was purely technical.

4. Mr. Dandavate, who appears for the appellants, has contended that under Section 188, Criminal Procedure Code, the proceedings were entirely ultra vires and the trial void because the certificate required of the Political Agent for Kurundwad by Section 1.88, Criminal Procedure Code, was not received until the Committing Magistrate had recorded some of the evidence for the prosecution, although it was undoubtedly received before the Committing Magistrate framed the charge and committed the accused to the Sessions. Now tinder Section 10 of the Extradition Act XV of 1903 with which for the purposes of this case the provisions in the Criminal Procedure Code, Section 188, must be taken as in pari materia jurisdiction is distinctly conferred on the Magistrates in British India to make preliminary enquiries and to take evidence on the information given or complaint laid in regard to offence alleged to have been committed by Native Indian or British Subjects of His Majesty without and beyond the limits of British India not being in a

Foreign State as defined in that Act and to order warrant to issue for the arrest of such accused persons. There can be no doubt therefore that the Magistrate had jurisdiction to take evidence and issue warrant for the arrest of the accused persons and at the date of committal had jurisdiction to commit the accused. The objection amounts to this at the most that if the point had been taken before the charge was framed and with respect to the evidence of any of the witnesses who had been examined before the Political Agent issued the certificate, then there might have been ground for asking the Magistrate to re-call and re-examine witnesses who had been examined before the certificate was issued. There can therefore be no doubt that the Committing Magistrate had jurisdiction at the time he committed the accused to the Sessions Court to order such committal and the Sessions Court at Belgaum had jurisdiction to try the accused persons. The necessary certificate from the Political Agent was received before the committal was made. It is unnecessary, therefore, to consider or decide whether the provisions of Section 188, Criminal Procedure Code, were completely observed before committal. It is sufficient to say that Mr. Dandvate has not quoted any authorities bearing exactly upon that point nor has he satisfied us that the word 'charge' as used in Section 188, Criminal Procedure Code, is not used in the sense in which it is used elsewhere in the Code of Criminal Procedure. Assuming that it would be more regular for the Committing Magistrate to have re-called the witnesses whom he had examined before the certificate was issued, nevertheless it has not been shown that the accused have in any way been injured or prejudiced : and this constitutes, in our opinion, no ground for disturbing the convictions in this case. On this point we may refer to Section 537, Criminal Procedure Code.

5. Then it was contended that the Sessions Court allowed inadmissible evidence to be placed before the jury. It is contended in the first place that the evidence given by Major Bholanath, the Medical Officer of the Regiment to which the accused belonged, as to the confession of accused No. 1, ought not to have been admitted. First, because he was person in authority, and, secondly, because Major Bholanath told accused No. 1 when he was under his treatment in the Hospital that it would be better for him to tell the truth as to how he came about certain wounds. As to this objection, it does not appear that Major Bholanath was a

person in authority in respect of any proceedings which might be contemplated or taken against the accused who made that confession to him. All that Major Bholanath seems to have put before accused 1 appears to be that on medical grounds it would be for accused 1's benefit if he told the truth as to how he came by the wound.

6. Further it was contended that the confession made by accused Nos. 3 and 11 were not admissible in evidence, because they were made to a Commissioned Officer of the Regiment whom we are asked to treat as a person in authority and because this officer to whom the confessions were made, stated to the accused that he had already obtained information from another person and promised secrecy if these persons told the truth. It has not been shown that when these men made these statements they were accused persons at that stage. The Company Officer to whom the statements were made is not shown to be a person in authority in relation to any proceedings that were to be taken in the present case, except that Nos. 4 and 8 were men belonging to his Company.

7. As to the alleged deception and inducement, they appear covered by the provisions of Section 29, Evidence Act, wherein it is laid down :-'If such confession is otherwise relevant, it does not become irrelevant, merely because it was made under a promise of secrecy or in consequence of a deception practised on the accused person for the purpose of obtaining it etc'.

8. Then it was contended by Mr. Dandvate that the Sessions Judge in summing up the case to the jury did not place before them the evidence which was favourable to the accused and that in repeating to the jury the substance of the evidence he did not lay sufficient emphasis on certain discrepancies as to the evidence of witnesses and especially that those accused who confessed and implicated others by name left it to the witnesses who heard those confessions to infer that the persons implicated were the persons bearing those names placed on trial.

9. Mr. Dandwate has gone at considerable length into the evidence on record. We have examined fully the heads of charge recorded by the Sessions Judge. We find that all the points which Mr. Dandwate has urged in this respect were urged at considerable length in the Sessions Court. We are of opinion that the charge has

stated fairly and impartially the state of the evidence against the accused. Mr. Dandwate's contention that accused, except those who confessed, have been convicted on the uncorroborated confession of their co-accused, is not substantiated by the record. There was complete evidence of eye-witnesses as to identification of each of the appellants and it was entirely within the province of the jury to decide whether they would believe the evidence and were satisfied that guilt was brought home to each of the appellants.

10. We do not find any illegality in the trial or that any irrelevant evidence was admitted and there is no legal ground for our interference with the conviction recorded in this case.

11. As to sentence, it was suggested by Mr. Dandwate that the sentences were severe. Looking to the nature of the offence and the class of persons by whom it was committed, we are unable to hold that the sentence is excessive.

12. We accordingly confirm the conviction recorded against and the sentence passed on all the accused and dismiss the appeal.