

Emperor Vs. Bhausing Dhumalsing

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Court : Mumbai

Decided On : Jul-07-1908

Reported in : (1908)10BOMLR759

Judge : Basil Scott, C.J. and ;Knight, J.

Appeal No. : Criminal Application for Revision No. 84 of 1908

Appellant : Emperor

Respondent : Bhausing Dhumalsing

Disposition : Application dismissed

Judgement :

Basil Scott, C.J.

1. The petitioner, with eight other persons, was charged with rioting and causing hurt to the complainant under Sections 147, 323 and 325 of the Indian Penal Code, in the Court of the Second Class Magistrate of Yeola, and was convicted under Sections 147 and 325 of the Code and sentenced to simple imprisonment for fifteen days.

2. The petitioner then appealed to the First Class Magistrate who altered the conviction to one under Section 323 and reduced the sentence to five days' simple imprisonment and under Section 106 of the Criminal Procedure Code directed that

the appellant should execute a bond of Rs. 100 to keep the peace for one year.

3. The petitioner now applies to us in revision to set aside the order for execution of a bond contending that the Court had no jurisdiction to add such an order to the sentence of the Second Class Magistrate.

4. We cannot accept that contention. Section 106 of the Criminal Procedure Code authorises such an order whenever any person is convicted of an assault by the Court of a Magistrate of the First Class and such Court is of opinion that it is necessary to require the execution of such a bond. Both conditions are fulfilled in the present case, for the order of conviction under Section 323 was passed by the First Class Magistrate and his opinion was that the bond was necessary.

5. It has however been contended that such an order cannot be made in appeal and in support of that contention the following cases have been cited : Mahmudi Sheikh v. Aji Sheikh L R (1894) Cal. 622, Muthiah Chetti v. Emperor I L R (1905) Mad. 190 and Paramasiva Pillai v. Emperor(1906) I.L.R. 30 Mad. 48.6. We are not prepared to accept the construction placed upon Section 106 in those cases. We think that Clause (3) makes it clear that the order for security may be made in appeal whether the original Court had jurisdiction to pass such an order or not. The clause runs: ' An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision', the 'also' plainly implying that it may be independently made by those Courts as well as by the original Courts specified in the first clause; and it is neither suggested nor implied that the powers of the original Court should in any way control or limit those of the appellate or revisional authority. In support of this view we may refer to the judgment reported in the case of Dorasami Naidu v. Emperor I L R (1906) Mad. 182 . which throws doubt upon the correctness of the decisions above mentioned. We may say that we entirely concur in the reasoning of the latter part of that judgment.

7. For these reasons we dismiss the application.