

Emperor Vs. Ranchhod Harjivan

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Court : Mumbai

Decided On : Apr-03-1925

Reported in : AIR1925Bom479; (1925)27BOMLR1019

Judge : Norman Macleod, Kt., C.J. and ;Coyajee, J.

Appeal No. : Criminal Reference No. 4 of 1925

Appellant : Emperor

Respondent : Ranchhod Harjivan

Judgement :

Norman Macleod, Kt., C.J.

1. The accused was charged before the Third Class Magistrate of Umbergaon with having committed an offence under Sections 352 and 504, Indian Penal Code. He was found guilty; but instead of sentencing him to punishment, the Magistrate discharged him after giving admonition under Sub-section (1A) of Section 562 of the Criminal Procedure Code, on account of his tender age. The District Magistrate has referred the case to this Court on the ground that the proviso to Section 562 is applicable to the whole of Section 562, including the newly added Sub-section (1A), so that the Third Class Magistrate was not competent to exercise powers under Section 562 (1A). It is unfortunate that when Sub-section (1A) was added to Section 562, the legislature did not place it before the proviso. Ordinarily speaking, when a proviso governs the whole of the provisions of a

section, it ought to appear at the end. This proviso says that where any first offender is convicted by any Magistrate of the Third Class, or a Magistrate of the Second Class not specially empowered by the local Government in this behalf, and the Magistrate is of opinion that the power conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the First Class or Sub-Divisional Magistrate, forwarding the accused to, or taking bail for his appearance before such Magistrate, who shall dispose of the case in manner provided by Section 380. Before sub Section (IA) was added, the only power conferred on the Court by the section was to direct that the accused, if a first offender, in cases coming within the section should be released on his entering into a bond, with or without sureties to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour.

2. A further power is added by Sub-section (1A) to release the accused in cases coming within the sub-section after due admonition, if he is a first offender. That undoubtedly is a power under the section, and although the proviso comes now in the middle of the section, that fact does not affect the competency of the Third Class Magistrate to exercise the power granted to the Court under Sub-section (1A).

3. We think then in this case the District Magistrate was right, and the Third Class Magistrate should have remitted the proceedings to the Magistrate of the First Class or Sub-Divisional Magistrate. It is competent to this Court now on this reference to review the Third Class Magistrate's order. Considering the circumstances of the case, the position of the accused, and his unwarranted conduct towards the complainant, we do not think that he should be let off without any punishment at all. Although as the Magistrate remarks, he may be of tender age, buoyant nature, and impulsive character, still he does occupy a certain position in society, and it is certainly incumbent on such persons to see that they behave properly towards those whom they employ to do work for them. We think the accused should pay a fine of Rs. 30: in default to undergo fourteen days' simple imprisonment.

