

Emperor Vs. Shivlingappa Basappa

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Court : Mumbai

Decided On : Aug-17-1922

Reported in : AIR1923Bom74; (1922)24BOMLR1150; 73Ind.Cas.812

Judge : Lallubhai Shah, Kt., C.J. and Crump, J.

Appeal No. : Criminal Reference No. 29 of 1922

Appellant : Emperor

Respondent : Shivlingappa Basappa

Judgement :

Lallubhai Shah, Acting C.J.

1. In this case five persons were tried by the Second Class Magistrate of Sholapur and convicted of hurt under Section 323, Indian Penal Code. There was a charge under Section 147, Indian Penal Code, but as there is some difference between the parties as to what the correct interpretation of the charge as framed was, I do not desire to express any opinion as to whether the charge also related to the offence under Section 323, Indian Penal Code, I have referred to the charge to show what the nature of the proceeding was.

2. The accused appealed to the Sub-Divisional Magistrate Under Section 407, Criminal Procedure Code, who was authorised to hear appeals from the Second Class Magistrates. Without giving any notice to the District Magistrate, he

proceeded to decide the appeal, and accused. The case has been brought to our notice on a reference by the District Magistrate, and the learned Government Pleader has appeared to support the contention that the appeal has not been legally disposed of in so far as it was heard and decided without giving notice to the District Magistrate as required by Section 422, Criminal Procedure Code. That section provides that 'if the appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard.' The officer appointed by the Local Government in this behalf is the District Magistrate, and though this provision would not apply so far as the District Magistrate is concerned when the appeal is filed in his Court, it is clear that under the provisions of Section 422, Criminal Procedure Code, the notice of appeal should have been given to the District Magistrate in the present case. The section is imperative, and we do not think that the omission to give such a notice could be treated merely as an irregularity. It is true that under Section 439, Criminal Procedure Code, we do not interfere ordinarily with orders of acquittal; but this is a case in which it is pointed out to us that there has been no legal disposal of the appeal, and the order which is made without a proper hearing cannot be accepted as a valid order. We, therefore, set aside the order of acquittal made by the Sub Divisional Magistrate and direct that the appeal be heard and disposed of by him according to law.

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