

Emperor Vs. Cholappa Malharappa

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Court : Mumbai

Decided On : Nov-15-1906

Reported in : (1906)8BOMLR947

Judge : Batty and ;Heaton, JJ.

Appeal No. : Criminal Appeal No. 372 of 1906

Appellant : Emperor

Respondent : Cholappa Malharappa

Judgement :

Batty, J.

1. This is an appeal by the Local Government from the order of acquittal, by which the accused, an employee of a license holder was on appeal acquitted of the offence with which he had been charged under Section 45 of the Bombay Abkari Act. The Local Government in appealing asked this Court to set aside the acquittal and convict the accused, on the facts held proved by the lower Courts, of an offence under Section 43(g) of the Abkari Act, which has been held applicable to facts such as those in the present case in *Queen-Empress v. Framji Bamanji Kelavalla* (1900) Bom. L.R. 664 and the cases there cited.

2. There is no doubt that these rulings do apply in the present instance, and the facts alleged if proved amount to an offence under Section 43(g).

3. Objection is taken however as to the qualification of the Mamlatdar who originally tried the case. It is not suggested that Section 191, Criminal Procedure Code, is applicable, as a complaint was formally made on which action was taken. But admittedly the Mamlatdar did receive certain information before the complaint came to him and reported on it expressing an opinion as to the facts. Now no doubt this would have been very good ground for applying for a transfer and the Court would have had to consider, very closely whether the accused was likely to get an impartial trial notwithstanding. But no such objection was taken at the time, and the suggestion that Section 556, Criminal Procedure Code, would apply to the Magistrate, as a person interested, is a suggestion to which we can give no weight. The phrase 'interested' does not imply mere intellectual 'interest' but something of the nature of an expectation of advantage to be gained or of a loss, or some disadvantage to be avoided, by the person who is said to be interested in the case. We think that is clear from the section. The mere fact that the enquiry was made by the Magistrate should not be regarded as a disqualifying ground is clear from the last para of Section 556 as amended.... On the whole we think that there was no legal objection or ground which would have deprived the Magistrate of jurisdiction, and we do not think having regard to the evidence of the case, and the opinion formed by the lower appellate Court, that the accused was in any way prejudiced by his trial by the Mamlatdar, the lower appellate Court having arrived at the same conclusion on the facts as that arrived at by the Mamlatdar.

4. We accordingly set aside the order of acquittal and convict the accused under Section 43(g), Abkari Act. We also restore the sentence of fine of Rs. 40, or in default 10 days simple imprisonment, originally passed.