

Baban Daud Vs. Emperor

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Court : Mumbai

Decided On : Aug-12-1915

Reported in : AIR1915Bom254; 31Ind.Cas.352

Judge : Shah and ;Hayward, JJ.

Appellant : Baban Daud

Respondent : Emperor

Judgement :

Shah, J.

1. The petitioner in this case was arrested on a charge under Section 457 of the Indian Penal Code on the 13th of January 1913. He was kept in custody at Pandharpur and tried on the 17th of January 1915, which was a Sunday. The trial was commenced and practically finished on that day. The judgment was given on the 18th of January. He was convicted and sentenced to eighteen months' rigorous imprisonment.

2. In the petition before us he has complained that he was improperly tried on a Sunday, and that if he had not been so tried, he would have been in a position to engage a Pleader and to defend himself properly. It is not argued before us that the trial held on a Sunday is illegal. It seems to me, however, that having regard to Circular No. 37 of the Criminal Circulars of this Court, ordinarily it is not proper to

hold a trial on a Sunday. In the present case it is not suggested that there was any urgency or any special circumstance for adopting this unusual course. I am, therefore, of opinion that under the circumstances of this case it was not proper for the Magistrate to have tried the petitioner on a Sunday.

3. From the facts disclosed in the petition here and from the report of the Magistrate which was called for on the petition to this Court, it appears that the accused was probably prejudiced in this case on account of the trial having been held on a Sunday. While he was in custody at Pandharpur on the 15th of January, he had sent a letter to his father at Hotgi through the Mamlatdar informing him that he was arrested and requesting his father and mother to go at once with money to Pandharpur. The mother arrived at Pandharpur with the money on Sunday, the 17th January, after the trial was over. If the trial had not been held on the 17th January, it is probable that on the following day the accused would have been in a position to engage a Pleader and to make such arrangement for his defence as he might have thought proper. Under these circumstances it seems to me that there has been an irregularity in the procedure which has prejudiced the accused, and that the accused cannot be said to have had a fair opportunity to defend himself. It is quite true, as pointed out by the Magistrate in his report, that the accused did not request the Court on the 17th to adjourn the case, and when he was asked whether he had a Pleader, he said that he had none. But this circumstance by itself does not, in my opinion, affect the conclusion which I have already stated.

4. The result, therefore, is that we set aside the conviction and sentence and order a re-trial of the accused according to law.

5. We leave it to the District Magistrate to determine whether under the circumstances the re-trial should take place before the same or any other Magistrate.

Hayward, J.

6. I concur. I have no doubt that the applicant bona fide intended to engage a Pleader. He was arrested on Wednesday night and on the Friday sent a letter to his father asking for pecuniary assistance. In reply to that letter, his mother arrived

after the trial was over on the night of Sunday. It is true he was asked at the trial whether he had got a Pleader, but at that time having no answer to his letter, he naturally replied he had not got a Pleader. When his mother arrived on the night of Sunday, the trial was practically over. It was not, therefore, unnatural that she also did not specifically mention the need of a Pleader. It is moreover to be observed that there would probably have been no opportunity of engaging a Pleader on the spot on that day, which was a Sunday when Pleaders would not ordinarily attend the Court. The trial on a Sunday or any other holiday would not necessarily make the proceedings invalid, but it would, in my opinion, be irregular as contrary to the provisions of Circular No. 37 of the Criminal Circulars of this High Court.

7. It seems to me that the applicant was distinctly prejudiced by this irregularity in respect of his right to be represented by a Pleader, a right given to every accused person by the specific provisions of Section 340 of the Criminal Procedure Code. The case against the applicant was not a petty one but serious, and was, in my opinion, one in which it was desirable that he should be defended by a Pleader. It is, therefore, necessary, in my opinion, to set aside the conviction and sentence and order a re-trial, which should be either before the same Magistrate or such other Magistrate as might be selected by the District Magistrate.

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