

Emperor Vs. Aba Farid Bargir

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Court : Mumbai

Decided On : Oct-01-1926

Reported in : (1927)29BOMLR700; 103Ind.Cas.108

Judge : Shah and Fawcett, JJ.

Appeal No. : Criminal Reference No. 78 of 1926

Appellant : Emperor

Respondent : Aba Farid Bargir

Judgement :

Shah, J

1. In this case the order under Section 118, Criminal Procedure Code, was made on October 20, 1920, and the order of imprisonment for one year in consequence of the failure of the accused to give security in pursuance of the order under Section 118 of the Code was made under Section 123, Criminal Procedure Code, on October 29. But between October 20 and 29 the accused was convicted and sentenced to seven years' rigorous imprisonment and that sentence commenced between these two dates. Under Section 120, Sub-section (2), Criminal Procedure Code, the period of the order requiring the accused to give security commenced on October 20; and, if the proper procedure had been followed, the learned Magistrate in this case should not have made any order under Section 123, Criminal Procedure Code, of imprisonment at all at that stage. But in fact he made

the order under Section 123, Criminal Procedure Code, on October 29. As the period in respect of which the order under Section 118 was made has now expired and the period of imprisonment under Section 123, Criminal Procedure Code, has also expired, it is clear that the accused is entitled to be set at liberty, as we are informed that the period of his substantive imprisonment is over. It is not necessary to quash the order, as it is now spent. The papers to be returned to the District Magistrate with this expression of opinion.

Fawcett, J

2. I agree. I would add that the new proviso inserted in Section 397 in 1923 favours this construction, as is pointed out in Sohoni's Code of Criminal Procedure, Edn. 1924, pp. 838 and 839.

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