

Sheo Mandil Vs. Emperor

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Court : Allahabad

Decided On : Aug-30-1938

Reported in : AIR1939All5

Appellant : Sheo Mandil

Respondent : Emperor

Judgement :

ORDER

Mohammad Ismail, J.

1. This is an application in revision on behalf of one Sheomandil who was convicted and sentenced to a term of nine months rigorous imprisonment and a fine of Rs. 500 under Section 406, I.P.C., by a Magistrate of the First Class. The order of the learned Magistrate was confirmed on appeal by an order dated 20th August 1938. The applicant now comes to this Court in revision. It is admitted by learned Counsel that the accused has not surrendered himself and is still at large. The concluding portion of the order of the learned Sessions Judge is : 'The appeal is rejected. The accused is directed to submit to his bail bonds.' This order has not been complied with. Learned Counsel for the applicant states that the Appellate Court had not directed the applicant to be present in Court at the time of the delivery of judgment. Reference has been made to the Proviso to Section 424 which lays down that unless the Appellate Court otherwise directs, the accused

shall not be brought up or required to attend to hear the judgment delivered. This Section is limited in its operation to the stage when the judgment is pronounced. In the judgment itself the learned Sessions Judge has directed the accused to surrender himself, as he was bound to do, and it was the duty of the applicant to enter appearance as soon as he was apprised of the order of the Court. It is not suggested that the accused is unaware of the order of the Court below. The fact that he has come to this Court in revision is proof positive of his knowledge of the order that has been passed by the Court below.

2. The question for consideration is whether it is open to the applicant or his learned Counsel to move this application until the applicant has obeyed the order of the Judge and has surrendered to his bail bonds. The exercise of powers under Section 435 and the Sections immediately following it are discretionary. Section 440, Criminal P.C., provides that no party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision. In this instance the applicant has thought fit to remain at large and in my opinion he is in contempt of Court. In *Har Narain Prasad v. Emperor* (1923) 10 A.I.R. All. 327, a learned Judge of this Court declined to entertain the application of an accused person who had absconded after being released on bail. The facts of his case are distinguishable. In *Khairat Ali v. Wahid Ali* : AIR1928 Cal241 it was held that a party who was in contempt of Court could not be heard in revision. In that case a warrant was issued for the arrest of the petitioners. The petitioners without appearing before the trial Court moved the Sessions Judge and prayed for an order of stay, of further proceedings. The application was dismissed by the Sessions Judge and thereupon the petitioners moved the High Court for the same order. The Court discharged the rule on the ground that the petitioners had not appeared in pursuance of the warrant issued by the Magistrate.

3. It seems to me that as long as the applicant does not enter appearance in obedience to the order of the Court below, this Court will not be justified in exercising its discretionary powers in favour of the applicant. Further, until the order of the Court below is complied with, learned Counsel representing the applicant will not have a right of audience. I have fully considered the argument of learned Counsel and I am of opinion that this application cannot be entertained at

present. It is accordingly rejected. This order will not stand in the way of the applicant if he comes to this Court in revision after surrendering to his bail bonds. As copies of the judgments of the Courts below have been filed, it will not be necessary for the applicant to file fresh copies of the judgments.

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