

Abdullah Vs. Jitu

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1900)ILR22All216

Judge : Blair, J.

Appellant : Abdullah

Respondent : Jitu

Judgement :

Blair, J.

1. Three persona were sent before a Magistrate to answer a charge under Section 426 of the Indian Penal Code. Two of them presented themselves, the third was absent. The case was heard against the two who were present. Upon their being convicted, the Court showed its appreciation of the magnitude of their offence by inflicting on each of them a fine of Re. 1. That amount was ordered to be given to the prosecutor, and the Magistrate says that it would more than recoup him for any damage suffered. The Magistrate also says that in his opinion the matter was so trivial that it was not desirable to waste time in pursuing the charge against the absent man. A few days after that determination of the case against the two, a fresh complaint was lodged against the third man by the prosecutor, and the Magistrate rightly held that such a complaint was not barred by any rule of law. The Magistrate entertained the complaint and issued his warrant for the arrest of

the person charged. After some search had been made the Magistrate found that the person for whom the warrant had been issued was absconding or concealing himself to evade process, and thereupon on the 12th September drew up a proclamation calling upon the person charged to appear at the Court House at Allahabad within thirty days of the date of proclamation. It is not dear whether there ever was complete publication as required by law of that proclamation. The provisions of Sub-sections (6) and (c) appear to have been complied with upon the 17th September. There is nothing to show whether the provisions of Sub-section (a) were ever complied with at all. There was no endorsement or statement in writing made by the Court validating the proclamation. It is therefore obviously not a proclamation according to law. It did not specify a place and a time for the appearance of the absent man within thirty days or more from the date of the publication.

2. Apparently some form intended to amount to an attachment was gone through, but apparently the property, whatever it was, was allowed to remain in the possession of its original owner. A sale took place of what are described as houses. Purchasers were found and, I suppose, the purchase money was paid. Whether the possession of the property ever passed into other hands than that of the original owner is not clear. Now these matters were brought to the attention of the District Judge in an application for revision made by the absent man, and the Judge refers to this Court a statement of the facts coupled with a recommendation that further proceedings before the Magistrate should be put a stop to, and the attachment and sale be cancelled, and the sale money returned to the purchasers. It has been objected to the Judge's recommendation that the applicant in revision before him had and has his remedy under Section 89 of the Code of Criminal Procedure, which enables the subject of such a proclamation as this to prove within two years that he had not absconded to avoid the warrant, and that he had not sufficient notice of the proclamation to enable him to attend within the time specified therein. It seems to me that Section 89 prescribes a remedy where there is a good and legal publication, but offers no facility for the contesting of the legality of the proclamation. The fact, however, remains that a sale has taken place; that the purchasers have acquired some sort of title, and I am not aware that this Court in exercising its revisional power has ever passed an order affecting

the title of persons (outsiders) to the legal proceedings in which the order is made. I therefore direct that the proceedings before the Magistrate go no further, and must decline to make the order desired in respect of the order of attachment and sale of the property. It will be for the parties to seek elsewhere their legal remedies.

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