

**ishaq and ors. Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/448733](http://sooperkanoon.com/448733)

**Court :** Allahabad

**Decided On :** Jan-27-1937

**Reported in :** AIR1937All373

**Appellant :** ishaq and ors.

**Respondent :** Emperor

**Judgement :**

ORDER

**Ganga Nath, J.**

1. This is an application in revision by Ishaq Ahmad, Anis, Shamouddin, Ibrabim, Mt. Dhaneshri, Mt. Tileshari, Rahmat, Masood, Phul Mohammad and Mahbub against the order of the learned Sessions Judge of Ghazipur setting aside the order of discharge of the learned Committing Magistrate and ordering the accused to be committed to the Court of Session for trial. The accused have been charged under Sections 363, 366 and 368, I.P.C. The learned committing Magistrate has written a very long judgment discussing the evidence before him. He has criticized the evidence for the prosecution. The learned Sessions Judge considered the same evidence and came to the conclusion that it was a case which ought to have been committed to the Court of Session. There can be no doubt that Magistrate cannot usurp the functions of a Sessions Court. There are three classes of cases, namely,

(1) cases where the evidence is prima facie so clear that nobody can entertain any doubt that the matter ought to be tried;

(2) cases where the evidence is so palpably tainted, absurd, incredible and, as it has been described on occasions, groundless that nobody could doubt that it would be a hardship and unjust to an accused person to allow the matter to go any further and

(3) cases which of course provide debatable ground, where the evidence is conflicting and lays itself open to suspicion but where on the other hand it may be true and may commend itself to certain tribunals. In the last mentioned cases, the Magistrate, even though he may have reason to doubt whether if he were trying the case he would convict, has no right to substitute his judgment for the final judgment of the Court indicated by law the trial and to arrive at a final decision dismissing the case in the way in which he would do if he were the trial Court. Even if the evidence is balanced however unevenly in his opinion then it is a matter which has to be tried and it is his duty to commit it for trial. The learned Sessions Judge has stated in his order that there is evidence in support of the charge and that there are several circumstances which have to be explained by the accused. According to him the case falls within the purview of the third class of cases mentioned above. I purposely refrain from entering into the merits of the evidence as it might prejudice the accused in their trial. It is not a case in which the discretion exercised by the learned Sessions Judge under Section 437, Criminal P.C., should be interfered with in revision. It is therefore ordered that the application be rejected.

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