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Lachman Prasad Vs. Emperor

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Court : Allahabad

Decided On : Aug-25-1942

Reported in : AIR1943All23

Appellant : Lachman Prasad

Respondent : Emperor

Judgement :
ORDER

Allsop, J.

1. This is an application in revision on behalf of one Lachman Prasad who has been bound over under Section 110, Criminal P. C. Learned Counsel has not stressed the merits of the case, but I have glanced through the judgment of the learned Sessions Judge and it certainly appears that he was rightly bound over. Learned Counsel has taken the point that his client was prejudiced because he was denied the right of a second cross-examination under the provisions of Section 256, Criminal P. C. He has referred me to Trilok v. Emperor : AIR1927 All660 and Chandan v. Emperor : AIR1930 All274 . A learned single Judge of this Court said in the first of these cases that a person whose conduct is under enquiry under the provisions of Section 117, Criminal P. C., should be given a second right to cross-examine witnesses produced against him in accordance with the provisions of Section 256, Criminal P. C. In the second case there was a passing

reference to the same point. That was a case in which there were two Judges but one of them was the learned Judge who expressed his opinion in the first case. The question did not really arise because the learned Judges decided that they would not interfere with the conviction upon the ground that no prejudice had been caused to the persons who had been bound over by failure to ask whether they wished to cross-examine for a second time. On the other hand, contrary views have been expressed by two learned Judges of the Calcutta High Court in Chintamon Singh v. Emperor 35 Cal. 243 and by a learned Judge of the Lahore High Court (Sir Shadi Lal) in Ahmad Baksh v. Emperor ('16) 3 A.I.R. 1916 Lah. 295.

2. In these cases it has been pointed out that a person who is charged with an offence during the trial of a warrant case is then for the first time told exactly what charge he has to meet and that he does not know his position with any accuracy when the charge is framed, whereas a person against whom proceedings are conducted under Section 117, Criminal P. C., already knows from the notice drawn up under Section 112 of the Code exactly what the accusations against him are. The learned Judges point out therefore that there is no reason why there should be a second cross-examination in proceedings under Section 117. One of the learned Judges has said that the first cross-examination is equivalent to a cross-examination after the charge. The learned Judge of this Court in the first case which I have mentioned suggested that the Magistrate at some stage of the proceedings under Section 117 should interrupt them and tell the person whose conduct was under enquiry that there is now a prima facie case against him and that he will be expected to defend himself. There is no such provision anywhere in the Code of Criminal Procedure. Section 117 says only that proceedings under that section shall be conducted as far as practicable as proceedings are conducted in a warrant case. For these reasons, I very much doubt whether a person whose conduct is under enquiry under Section 117, Criminal P. C., is entitled at any stage of the proceedings to demand that witnesses who have been cross-examined should be recalled for further cross-examination. It is difficult to know when that stage would arrive. The question is, however, of no great importance in the case before me because the learned Judge has found quite rightly that the applicant was not prejudiced because his application for a second

cross-examination was refused. He had been represented by counsel and the witnesses had been fully cross-examined already on one occasion. This is not a ease in which this Court will interfere in revision. The application is rejected.

3. I am told the applicant is on bail. It should not be necessary to pass a specific order that he should surrender to his bail because bail is itself only granted till such time as orders are passed on the application but I hereby direct that the applicant shall surrender to his bail and serve out his sentence.

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