

Emperor Vs. Birch

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Court : Allahabad

Decided On : Mar-11-1902

Reported in : (1902)ILR24All306

Judge : Knox, J.

Appellant : Emperor

Respondent : Birch

Judgement :

Knox, J.

1. The accused has been convicted of an offence under Section 471 of the Indian Penal Code. He has been sentenced to three months' rigorous imprisonment. Of the serious nature of the offence there can be no doubt.

2. The learned Magistrate who convicted the accused said not one word too strong in his judgment about the nature of the offence. He adds, however, that in consideration of the youth of the accused (for he is only twenty years of age), and that he is apparently of a respectable family, and from his appearance seems rather weak than deliberately criminal, he proceeds to pass a sentence which would have been a light sentence for an offence under the section under which the accused was convicted.

3. Taking all the learned Magistrate had said into consideration, it appeared to me that this was a case to which the provisions of Section 562 of the Code of Criminal Procedure were intended to apply. It was necessary, however, to be satisfied that matters, which had not been proved before the Magistrate, should either be proved or admitted in this*Court, i.e. that the accused was one against whom no previous conviction could be proved, and that his character and antecedents were of such a nature as to authorize a Court to avail itself of this section. Time was accordingly given to both sides. The learned Government Pleader represented that he was satisfied that the evidence forthcoming as to character and antecedents of the offender would be quite sufficient, and he therefore did not propose challenging this point. He, however, contended that Section 562 was a section of which this Court could not avail itself when sitting as a Court of appeal; also that the offence was an offence punishable with imprisonment for more than two years. Lastly, he contended that the offence was not a trivial one. Dealing with the second objection first, he maintained that the offence of which the appellant was convicted was in reality an offence falling within the provisions of Section 466 of the Indian Penal Code. There is no doubt that the act of the accused is one which was far-reaching, and might have involved him in very serious results. I have, however, to deal with the following circumstances: (1) that he stands before me convicted of an offence under Section 465 read with Section 471; (2) that there has been no application before me to enhance the sentence, and that, on the other hand, the only argument before me has been that if the Learned Counsel for the appellant [.had pressed for the reduction of sentence, the learned Government Pleader had been instructed not to oppose such application.

4. I take the offence as it stands, an offence punishable with not more than two years' imprisonment. Regarding the third objection, it has already been dealt with to a very great extent in what I have just said. It is very fortunate for the accused that what was done was so quickly discovered, and the matter did not reach further. There remains the first objection, which is not so easy to decide. Taking into consideration all that has been argued before me, I am still of opinion that the new provisions inserted in Section 428, Clause (d) are sufficiently ample to enable me to deal with the case and to apply the provisions of Section 562. In a case before the Bombay High Court (that case is to be found in the Bombay Law

Reporter, Vol. II, p. 817[1]), the learned Judges read the section in the way I propose to read it, i.e. that where no previous conviction is proved against an offender, and the offence is one under the Indian Penal Code punishable with not more than two years' imprisonment, regard may be had to the youth, character, and antecedents of the offender, and the section applied on those grounds.

5. I accordingly, maintaining the conviction, alter the nature of the sentence, and make an order under Section 562 of the Code of Criminal Procedure.

6. I direct that accused enter into a personal bond of Rs. 100 with two sureties of Rs. 100 each, and that upon his doing so he be released, and for a period of one year undertake to appear and receive sentence when called for, and in the meantime to keep the peace and be of good behaviour. I give him one week within which to carry out this order. Upon the order being carried out, the bail under which he at present stands will be discharged.

[1] Queen-Empress v. Tukaram Chima. But in this cases the sole question before the High Court was whether the powers conferred by Section 562 could be exercised by the convicting Court in the case of a person of the age of 40 years, i.e. whether under that section the first offender with a past good character and antecedents must necessarily be also a 'youth'. The question whether the High Court as a Court of appeal could use the section was not in issue.--Ed.]

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