

Emperoe Vs. Ram Naresh Singh and ors.

Emperoe Vs. Ram Naresh Singh and ors.

SooperKanoon Citation : sooperkanoon.com/450457

Court : Allahabad

Decided On : Oct-26-1911

Reported in : (1912)ILR34All118

Judge : Karamat Husain and ;Chamier, JJ.

Appellant : Emperoe

Respondent : Ram Naresh Singh and ors.

Judgement :

Karamat Husain and Chamier, JJ.

1 . On the 17th of March 1911, Ram Naresh Singh, Ram Niranjana Singh, Dubri Singh, Dhakelu, Munnu and Jarbandhan were committed to the Court of Session at Mir/apur by a magistrate of the first class exercising jurisdiction in that district on a charge of having committed murder at a place in pargana Bhadohi in the Mirzapur district, which was, both at the time of the alleged offence and at the date of the commitment, part of British India. On the 1st of April, 1911, the state of Benares was constituted, and the village where the offence is said to have been committed became part of that state. For reasons, which it is unnecessary to state, this Court, on the 5th of April, 1911, transferred the case from the court of the Sessions Judge, Mirzapur, to the court of the Sessions Judge of Benares. The latter then referred the case to this Court with a recommendation that the order, transferring the case to Benares, should be set aside on the ground that this Court

had no jurisdiction to make such an order. On that this Court made an order which concludes as follows:

We do not understand the reference made to us by the learned Sessions Judge of Benares. It is for him to carry out the orders of this Court and not to question them. Let the record be returned to him with instructions to try the case committed to the Court of Session at Mirzapur, and transferred by this Court under order No. 1692, dated the 5th of April, 1911.

2. The Sessions Judge of Benares did not understand that order to mean that the Sessions Judge of Benares had jurisdiction to try the case. He understood that the question whether he had or had no jurisdiction to try the case was to be decided by him. Accordingly, on the case being called on, he took up the question of jurisdiction and decided that he had no jurisdiction to try the case. He seems to have been of opinion that the only court which could try the case was some court in the state of Benares. In support of that view he referred to the order passed by this Court in Criminal Revision No. 149 of 1911 *King-Emperor v. Mata Prasad*. That also was a reference by the Sessions Judge of Benares. The accused was charged with having committed an offence at a place which formed part of the Family Domains of the Maharaja of Benares in the Benares district. At the date of the alleged offence the accused would have been properly committed to the Court of Session at Benares. But on the 7th of February, 1911, a Government Notification was issued transferring the place in question to the district of Mirzapur, and the question arose whether the case, which had been committed to the court of the Sessions Judge of Benares, should be tried by the Sessions Judge of Benares or by the Sessions Judge of Mirzapur. This Court decided that the case should be tried by the Sessions Judge of Mirzapur, and under Section 185 of the Code of Criminal Procedure directed that the case should be tried by the Sessions Judge of Mirzapur. That case appears to us to have no bearing upon the present case. The learned Sessions Judge has attempted to distinguish from the present case the case of *Emperor v. Mahabir* (1911) I.L.R. 93 All 578 which was brought to his notice. He says that in that case the question was as to the forum of appeal, whereas in the present case the question is what court of original jurisdiction has power to try the case. It seems to us that the principle on which the case of

Emperor v. Mahabir was decided applies to the present case. The accused in the present case are charged with having committed an offence at a place which was in British India. They were properly committed to the Court of Session at Mirzapur and that court had jurisdiction to try them when the State of Benares was constituted. It is impossible to hold that the Sessions Court at Mirzapur was by the constitution of the State of Benares deprived of jurisdiction to dispose of criminal appeals then pending in it or cases which had been committed to it for trial. The Sessions Judge has referred also to the case of Damodhar Gordhan v. Deoram Kanji (1876) I.L.R. 1 Bom. 1867. It is sufficient to say that the actual decision in that case has no bearing whatever on the question which arises in the present case. The remark at the end of the judgment of their Lordships regarding the effect of a cession of territory upon cases where the jurisdiction over the subject matter and parties is territorial does not apply to the present case. At the date of the constitution of the State of Benares the accused persons were in British India, in the custody, in point of law if not in fact, of a court competent to try them. We hold that the Sessions Judge of Mirzapur had jurisdiction to try this case, that it was properly transferred to the Court of Session at Benares, and that the Sessions Court at Benares has jurisdiction to try the case. The Government Advocate presented both an appeal against and an application for revision of the order of the Sessions Judge. In our opinion no appeal lay, inasmuch as there was no order of acquittal, but we have no doubt that we have jurisdiction under Section 435 to set aside the order of the Sessions Judge directing that the accused should be set at liberty. One of the six accused has not been arrested. We think that the Sessions Judge should proceed to try the five accused who have been arrested. For the above reasons we set aside the order of the Sessions Judge of Benares, and direct him to proceed with the trial of the five persons who have been arrested. The appeal is formally dismissed.