

Emperor Vs. Jiwan

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SooperKanoon Citation : sooperkanoon.com/450460

Court : Allahabad

Decided On : Nov-26-1914

Reported in : AIR1915All114(2); (1915)ILR37All107

Judge : Tudball, J.

Appellant : Emperor

Respondent : Jiwan

Judgement :

Tudball, J.

1. This is a reference by the Sessions Judge of Shahjahanpur suggesting that the commitment of one Jiwan Kahar on a charge under Section 82(A) of the Registration Act for trial in his Court be quashed. The facts are simple. One Musammat Jhabbo died. Musammat Mulo forged a lease of certain land in favour of her own sons, signing the name of Musammat Jhabbo thereto. She then went to the Registration office and personating Musammat Jhabbo presented the document for registration. Jiwan Kahar identified her as being Musammat Jhabbo. The document was registered and returned to Musammat Mulo. Musammat Mulo was placed upon her trial and convicted of the offence of forgery. She was also placed upon her trial and convicted of the offence of cheating the Sub-Registrar. Jiwan was placed upon his trial for aiding and abetting forgery. He was acquitted. He was then placed upon his trial for aiding and abetting cheating. He was

convicted by the Magistrate, but acquitted on appeal. Thereupon the District Registrar gave sanction for his trial for an offence under Section 82 of the Registration Act. The Magistrate has now committed the case for trial, and hence the present reference. The learned Sessions Judge in a long order of reference suggests that under Section 403 the man cannot now be tried on the same facts for this offence under the Registration Act, because this was an offence for which he might have been charged (under Section 236) of the Code of Criminal Procedure and convicted (under Section 237) at his former trial. One point is quite clear, that the former trial and acquittal of Jiwan for the offence of aiding and abetting the forgery is in no way a bar to his trial for an offence under the Registration Act. The question is whether or not his trial and acquittal of the offence of aiding and abetting the cheating is a bar to the present trial. Where the law requires a previous sanction to be given before a charge can be entertained by a court, that court is not a court of competent jurisdiction until the sanction has been obtained. This was held in *In re Samsudin* (1896) I.L.R. 22 Bom. 711. At the former trial of Jiwan he could not have been charged with or convicted or acquitted of the offence with which he is now charged by reason of the want of sanction. Clause 4 of Section 403 lays down that a person acquitted of any offence constituted by any acts may, notwithstanding such acquittal, be subsequently charged with and tried for any other offence constituted by the same acts which he may have committed if the court by which he was first tried was not competent to try the offence with which he is subsequently charged. Therefore, it is clear that Jiwan may now be tried for the offence under Section 82 of the Registration Act. I, therefore, cannot accept the reference and order the record to be returned. The Sessions Judge will proceed with the trial. He, no doubt, will take into consideration, if he find the accused guilty, the fact that the man has already been subjected to two trials and has served a considerable period in jail.