

Emperor Vs. Abdul Latif

Emperor Vs. Abdul Latif

SooperKanoon Citation : sooperkanoon.com/450463

Court : Allahabad

Decided On : Mar-01-1918

Reported in : (1918)ILR40All416

Judge : Piggott, J.

Appellant : Emperor

Respondent : Abdul Latif

Judgement :

Piggott, J.

1. This application in revision arises on the following state of facts:- On the 17th of July last, a woman named Dojia was struck by a bullet while she was with her husband in a field where he was working. The shot had been fired by some sportsman in the immediate neighbourhood, and it is not suggested that the injury to Musammat Dojia was anything but accidental. A number of villagers were attracted to the spot and proceeded to arrest two Muhammadans, named Abdul Latif Khan and Badal Khan, as being responsible for the injury caused to Musammat Dojia. These two men were taken to the Kasganj Police Station, some five miles distant, along with the injured woman and her husband, and at the same time there was produced at the police station a double-barrelled muzzle-loading gun. The two Muhammadans arrested on suspicion were-admittedly strangers to Musammat Dojia and her neighbours. The police eventually sent up one of these

men, Abdul Latif Khan, for trial in respect of offences under Section 338 of the Indian Penal Code and Section 19 of the Indian Arms Act. The Magistrate who took cognizance of the matter began by issuing process against the other stranger, Badal Khan; but after taking the evidence, discharged both the accused persons. The order of discharge is dated the 21st of September, 1917. The gun in question, although bearing a serial number and therefore having apparently at some time or other been held lawfully under a licence, could not be traced in the Etah district, and it is admitted that Abdul Latif Khan and Badal Khan held no licence to possess fire-arms of any description. Representations were made to the District Magistrate as to the impropriety of the order of discharge, and on the 10th of November, 1917 the District Magistrate, after examining the record, passed an elaborate order, reviewing the evidence, discussing the comments made on the same by the trying Magistrate, and finally directing further inquiry to be made as regards Abdul Latif Khan. This order was of course passed under Section 437 of the Code of Criminal Procedure. It is quite clear that no previous notice had been issued to Abdul Latif Khan to show cause why the order of discharge passed in his favour should not be set aside. A curious feature of the case is that before that order had been set aside at all, that is to say, on the 7th of November, 1917, another first class Magistrate of the Etah district had taken cognizance of the offence and had issued process to Abdul Latif Khan to appear and answer charges under Section 338 of the Indian Penal Code and Section 19 of the Indian Arms Act. However, the question whether Abdul Latif Khan could have been re-tried by another Magistrate without the order of discharge passed on the 21st of September, 1917 being first set aside, is not now before me and I need not discuss it. The application in revision which I have to consider is against the District Magistrate's order of the 10th of November, 1917. Now it is beyond question that nothing in Section 437 of the Code of Criminal Procedure requires previous notice to any accused person who has been discharged before further inquiry into his case is ordered by a competent authority, that is to say, by the High Court, or the Sessions Judge, or the District Magistrate. Nevertheless it has been laid down in a number of cases that as a matter of judicial discretion it is advisable that previous notice should issue, when the matter for consideration is the setting aside of an order of discharge passed in favour of an accused person who has

actually been before a court to answer the facts alleged against him. I am not aware that the decision of this Court in *Queen-Empress v. Ajudhia* (1) (1898) I. L. R., 20 All., 339. which itself follows certain older decisions, has ever been disapproved of in any subsequent decision of this Court. I am myself of opinion that in a matter of this sort it would have been better for the District Magistrate to give Abdul Latif Khan previous notice and an opportunity of arguing the case before him. I am not disposed, however, to interfere with the order of the court below merely on this ground. If the only result of my doing so were to compel the District Magistrate to issue notice now to Abdul Latif Khan, this might only lead to the passing of another order under Section 437 of the Code of Criminal Procedure, and the only result would have been inconvenience to the courts and undesirable delay in the disposal of the matter. If, on the other hand, I were to take it upon myself to direct that no further proceedings be taken, I conceive that I should be straining the powers of this Court, and I am not satisfied that I should not be prejudicing the interests of justice. I have preferred to deal with the matter by asking the learned advocate who represents Abdul Latif Khan to take this opportunity of showing cause why further inquiry should not be ordered. In substance I have dealt with the matter as if the record had been called for directly by this Court with a view to considering the propriety of the order of discharge. I do not think it would be advisable for me to enter into detail with regard to the very different opinions expressed by the trying Magistrate and by the District Magistrate in respect of the value and reliability of the evidence produced at the original hearing. I do think, however, that the District Magistrate's order shows good and sufficient cause for further inquiry into this matter in the interests of justice. It seems practically beyond question that an offence punishable under the Indian Arms Act, as well as an offence punishable under Indian Penal Code, were committed by some person or other on the occasion in question. I agree with the District Magistrate that it is in the interests of justice that there should be further inquiry into the question whether the commission of one or both of these offences is or is not brought home to the accused Abdul Latif Khan. I think it advisable under the circumstances that this inquiry should take place outside the limits of the territorial jurisdiction of the District Magistrate of Etah. My order, therefore, is that this application for revision do stand dismissed, and that the further inquiry against

Abdul Latif Khan directed by the order of the 10th of November, 1917 be held in the district of Aligarh. I transfer the case in question to the court of the District Magistrate of Aligarh, who may either dispose of it himself or transfer it for disposal to the court of any first class Magistrate subordinate to himself.

2. With regard to one matter of detail which has been pressed upon my notice., I may say that I agree with the District Magistrate that the proceedings taken against Badal Khan were injudicious, and that the fact of his having been in the position of an accused person during the inquiry which resulted in the order of discharge should in no way be considered to prevent his being summoned as a witness in the further inquiry now ordered.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com