

**Mahtab Singh Vs. Emperor**

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**Court :** Allahabad

**Decided On :** Mar-01-1937

**Reported in :** AIR1937All438

**Appellant :** Mahtab Singh

**Respondent :** Emperor

**Judgement :**

ORDER

**Ganga Nath, J.**

1. This is a reference by the Sessions Judge of Mainpuri, recommending that the order of the learned Magistrate dated 10th November 1936 refusing the applicant's application for recalling the prosecution witnesses be set aside and the learned Magistrate be directed to re-summon and re-examine the prosecution witnesses. An inquiry under Section 110, Criminal P.C., is being made against Mahtab Singh. A part of the inquiry was made by Mr. T.L. Mahendra, Sub-Divisional Magistrate, who has been transferred and succeeded by Mr. Ram Gopal, who is continuing the inquiry from the stage as it was left by Mr. T.L. Mahendra. The applicant applied to Mr. Ram Gopal under Prov. (a), Section 350(1) Cri. P.C., to re-summon and re-hear the prosecution witnesses who were examined by his predecessor. Mr. Ram Gopal has rejected this application. The only question for consideration is whether the applicant is entitled under Prov. (a), Section 350(1), Criminal P.C., to

demand that the witnesses or any of them be re-summoned and re-heard. The procedure to be followed in cases of inquiry under Sections 107, 108, 109 and 110, Criminal P.C., is laid down in Section 117, Clause (2), Criminal P.C. Section 117, Clause (2) is as follows:

Such inquiry shall be made, as nearly as may be practicable where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases; and where the order requires security for good behaviour in the manner hereinafter prescribed for conducting trials and recording evidence in warrant cases except that no charge need be framed.

2. The inquiry in the present case therefore is to be made in the manner prescribed for conducting trials and recording evidence in warrant cases. Ch. 20, Criminal P.C., prescribes the procedure to be observed by Magistrates in, the trials of summons cases and Ch. 21 the procedure to be observed in the trials of warrant cases. Ch. 24 in which is Section 350 lays down general provisions which are applicable to inquiries and all trials whether of summons cases or warrant cases. The words, 'The manner hereinafter prescribed for conducting trials and recording evidence in warrant cases' in Clause (2), Section 117, Criminal P.C., are wide enough to cover the special procedure laid down for the trials of summons or warrant cases in Chs. 20 and 21 as well as the general provisions as to inquiries and trials contained in Ch. 24. Section 350(1) which is in Ch. 24 lays down:

Whenever any Magistrate, after having heard and recorded the whole or, any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so Succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and re-commence the inquiry or trial:

Provided as follows : (a) in any trial the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard.

3. Clause 1 gives a discretion to the trial Magistrate while Proviso (a) gives a right to the accused. One of the objects of this section is to give the trial Magistrate an opportunity to watch and observe the demeanour of a witness which is a very important factor in assessing the value of his evidence and in deciding the question as to how far reliance can be placed on him. There is no reason why in an inquiry in a case under Section 110, Criminal P.C., which vitally affects an accused he should be deprived of the right given to him in prov. (a) to ask the Magistrate to see for himself the demeanour of the witness and to have a first hand impression of the witness and his evidence. In *Y. Venkatachennaya v. Emperor* A.I.R. 1920 Mad. 337 it was held:

A person proceeded against under Rule 107, Criminal P.C., has the same right under Section 350(1), Proviso (a), as an accused person in a summons or warrant case, to have the witnesses recalled and reheard.

4. There the inquiry was under Section 107, Criminal P.C. The fact whether the inquiry is under Sections 107, 108, 109 or Section 110, Criminal P.C., makes no difference because Section 117, Clause (2), Criminal P.C., applies equally to an inquiry under any of these sections. It is therefore ordered that the reference be accepted, and the learned Trial Magistrate be directed to re-summon and re-examine the prosecution witnesses as is desired by the applicants.

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