

Ram Ghulam Vs. Emperor

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Court : Allahabad

Decided On : Mar-08-1931

Reported in : AIR1931All434

Appellant : Ram Ghulam

Respondent : Emperor

Judgement :

ORDER

King, J.

1. This is a reference for quashing an order of commitment under Section 215,, Criminal P. C.

2. The case started on a complaint of art offence under Section 363, I.P.C. The prosecution witnesses were examined and cross-examined. A charge was framed under Section 363. All the defence witnesses whom the accused wished to produce were also examined and cross-examined and the case was closed. When the case was put up for passing orders next day the Magistrate came to the conclusion that the evidence disclosed a prima facie case under Section 366, I.P.C. which is exclusively triable by the Court of Session. Acting under Section 347, Criminal P. C, the Magistrate framed a charge under Section 366, I. P. C and passed the commitment order which is the subject-matter of this reference.

3. The accused made an application complaining that he had been deprived of his right of further cross-examination of the prosecution witnesses and his right of producing further defence witnesses to disprove the amended charge. The learned Additional Sessions Judge held that the application was well founded and that the accused must be given an opportunity of further cross-examination and of producing further defence evidence before he could be committed for trial.

4. I do not think there is any illegality in the procedure adopted. Under Section 347, Criminal P. C., the Magistrate could commit the accused 'under the provisions hereinbefore contained,' i.e., the provisions contained in Chap. 18. He need not start proceedings de novo, but he must not deprive the accused of any right which he might have exercised under Chap. 18 if the case had been treated as an inquiry under that chapter from the outset.

5. But I cannot find that the accused has been deprived of any right which he might have exercised under Chap. 18. He has cross-examined all the prosecution witnesses. He has produced all the defence evidence that he wanted to produce. He had no further right of cross-examination after the framing of a charge under Section 210, Criminal P. C, and the amended charge must be deemed to have been framed under Section 210. He had no right to produce further defence witnesses in the Magistrate's Court, although if he had named any further defence witnesses the Magistrate might, under Section 212, have thought fit to summon and examine them. As a matter of fact the accused did not name any fresh defence witnesses, but asked that the witnesses already examined should be summoned to give evidence on his trial.

6. The Additional Sessions Judge relied upon the ruling *Mohan Lal v. Emperor* which certainly, does support his view. The facts of that case were very similar and a single Judge took the view that Section 231, Criminal P. C. was applicable and the accused must, after the amendment of the charge, be allowed to recall prosecution witnesses for further cross-examination and to produce further defence evidence. With due respect to the learned Judge I do not think Section 231 applies to the facts of this case. It only applies to the alteration of a charge after the commencement of the trial. But all the proceedings in the Magistrate's

Court' must be held to be proceedings in an inquiry under Chap. 18, and not proceedings in a trial, as soon as the Magistrate decides under Section 347 to commit the accused for trial in the Court of Session. The accused has exercised every right he could have exercised in an inquiry under Chap. 18. He will be tried in the Court of Session where he will have the opportunity of cross-examining all the prosecution witnesses over again. All his defence witnesses will also be examined over again. If he now wishes to produce fresh defence witnesses, whose names did not occur to him when he was asked for a list under Section 211 A.I.R. 1924 All. 665, the Magistrate has discretion to summon such fresh witnesses.

7. In my opinion the procedure was not illegal or irregular and the accused has not been prejudiced in any way.

8. I reject the reference. The order of commitment will hold good.

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