

Baqridee and anr. Vs. Emperor

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Court : Allahabad

Decided On : Jan-23-1930

Reported in : AIR1930All495

Appellant : Baqridee and anr.

Respondent : Emperor

Judgement :

Dalal, J.

1. The main point desired to be made out for this transfer was that the Magistrate hearing the case acted in conflict with the provisions of Section 256, Criminal P.C. After the examination and cross-examination of the prosecution witnesses a charge was framed and the Magistrate for reasons recorded in writing required the accused to state forthwith whether they would cross-examine any, and, if so, which, of the witnesses for the prosecution. The counsel did not desire to do so. The Magistrate said that counsel would have an opportunity of cross-examining then or never. It is suggested in this Court that the provisions of Section 256, Criminal P.C., imply that the question as to re-examination should not be put to an accused person until the next date of hearing. There is a very good answer to this argument given by one of the most experienced Judges of this Court. The learned Judge observed in the case of Mula v. Sheoraj Singh [1911] 8 A.L.J. 707:

The word 're-call' is very significant and does not mean re-summon. The grace given of two days for cross-examination was a distinct mistake on the part of the Magistrate and should be avoided in future. If the pleader for the defence who had heard the evidence-in-chief is not prepared to cross-examine then and there after the charge sheet had been drawn up, he hardly deserves the name and rank of pleader. Cross-examination is intended for testing the accuracy and credibility of the witnesses, not for building up a case for the defence.

2. After such specific instructions to subordinate Magistrates I am afraid that the eloquence of the learned counsel Mr. Zahur Ahmad has not produced much effect on me.

3. The next point made was 'that the Magistrate had some extra-judicial information about Baqridi. So long as executive and judicial powers are combined in the same officer this could not be prevented. Some Magistrates are honest enough to disclose their knowledge; others, more experienced, would take the precaution of not disclosing it. But as an officer in an administrative charge of a subdivision he has by the nature of his office to know men of importance and position in his subdivision and their characters. Merely by reason of such knowledge, an administrative officer cannot be deprived of jurisdiction as Magistrate.

4. The third point was that the Magistrate had in one case told the applicant Baqriddi to go out of his sight. The reasons given by the Magistrate for making such a verbal order are satisfactory. Baqriddi tried to interfere with some settlement at which the parties to a litigation had arrived in the Magistrate's Court. Baqriddi desired to stir up mischief and prevent accommodation, and the Magistrate naturally was not best pleased with the sight of him. It is finally argued that the state of the mind of Baqriddi should be considered. This would have been considered if Baqriddi had been an ignorant villager who would be frightened by the Magistrate being angry with him in one case and would believe that in another case the Magistrate would be for that reason prejudiced against him. Baqriddi is not a man of that type. When the Magistrate turned him out he presented to the Magistrate a petition inquiring of him why he had been angry. A man who does

that must be a man well experienced in the art of litigation and not a simpleton. I am perfectly certain that Baqridee does believe that he will get justice in this Court. His desire for transfer appears to me to be due to the hope that by the change of Court his point of view may have a greater chance of success. This application is dismissed.

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