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Latoor Mal Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/453166

Court : Allahabad

Decided On : Aug-06-1947

Reported in : AIR1948All137a

Appellant : Latoor Mal

Respondent : Emperor

Judgement :
ORDER

Mootham, J.

1. The applicant has been convicted under Section 174, Penal Code, of the offence of failing to comply with a summons issued under Section 160, Criminal P.C. The relevant part of the summons was in these terms:

Whereas your attendance is necessary at an inquiry being made into a charge under Rule 81, Defence of India Rules, you are hereby required to appear before me at thana Kosi Kalan on 19th day of February 1946. Herein fail not.

and it is argued on behalf of the applicant that this is not a summons for the non-compliance with which he can be prosecuted as it does not specify the time at which his attendance at the police station Kosi Kalan is required.

2. In other words, the argument is that the phrase 'place and time' appearing in Section 174 of the Code makes it necessary that the summons shall specify not merely the date but also the hour of the day at which the attendance of the person upon whom the summons is served is required. It is somewhat surprising that this point seems never to have been the subject of any reported decision.

3. In my view it is not necessary that in every case the exact hour at which the attendance of the person upon whom, the summons is served is required should be mentioned. I think, for example, that a summons which required a person to attend at a particular police station on a particular date between the hours of 3 and 5 in the afternoon, or ' at such time as may be convenient between the hours of 8 and 12 in the morning' would be such a summons as would render the person to whom it is addressed liable to prosecution if he failed to obey it, but in my opinion the position is different when the summons omits any reference whatever to the hour of the day at which the attendance of the person on whom that summons is served is required. It is said by the Crown that the effect ox omitting any reference to the hour of the day is to give the person to whom the summons is directed an option to attend at the police station at such time as he may elect during the period of twenty-four hours. This strictly is true, but it is not, in my opinion, a reasonable construction to put upon such a summons. It is more reasonable, in my view, to assume that a person who receives a summons requiring him to attend at a particular police station on a particular day without mentioning the hour will be left in some doubt and perplexity as to what time he should present himself at that police station.

4. It is, in my opinion, essential, in order to sustain a conviction under Rule 174, Penal Code, that the accused person should have been left in no doubt both as to the place and time at which his attendance is required and for the reasons which I have mentioned. I am, therefore, of opinion that a summons which, although it specifies the place and the day but omits mention o the time, is a summons which is not sufficiently specific to justify a prosecution if it be not complied with. In the circumstances, therefore, I quash the conviction of the applicant and set aside the sentence imposed on him. The fine, if paid, will be refunded.

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