

Emperor Vs. C.J. Sullivan

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Court : Allahabad

Decided On : Jun-18-1902

Reported in : (1902)ILR24All511

Judge : Aikman, J.

Appellant : Emperor

Respondent : C.J. Sullivan

Judgement :

Aikman, J.

1. This is an appeal on behalf of one C.J. Sullivan, who has been convicted by the District Magistrate of Meerut of an offence punishable under Section 354 of the Indian Penal Code, and sentenced to six months' rigorous imprisonment. The appeal is on the merits. But a preliminary objection is also taken in the petition of appeal to the legality of the proceedings of the District Magistrate.

2. Without entering into the merits of the case, I am of opinion that this appeal must be disposed of on the legal objection referred to. The appellant is an European British subject. The offence with which he was charged is an warrant case within the meaning of the Code of Criminal Procedure. By the provisions of Section 451, Sub-section (1) of the Code, an European British subject, in a trial before a District Magistrate in a warrant case may, 'before he enters on his

defence under Section 256, claim that the trial shall be by jury.' It appears that, in the present case, at the outset of the proceedings, the accused was asked if he wished to be tried by a jury, and replied in the negative. A charge was framed against the accused, and at his request certain witnesses who had been examined for the prosecution were ordered to be re-called for cross-examination. In his judgment the Magistrate observes: 'After the charge-sheet had been framed, an application for a jury was presented on his (the accused's) behalf. But it was then too late to accede to such a request.' This application, it appears, was made by the accused's counsel on the 22nd of April, before the date fixed for the re-appearance of the witnesses for the prosecution. The language of Section 256 shows that the application thus made was made before the accused entered on his defence. It was refused by the District Magistrate who dealt, with the case himself. The sole question which I have to determine is, whether the fact that the accused, before the trial had begun, stated that he did not wish for a jury, prevented him altering his mind afterwards, and claiming a jury within the time allowed by Section 451, Sub-section (1). I am clearly of opinion that there was nothing to prevent the accused, when he had heard the evidence for the prosecution, altering his mind and availing himself of the privilege allowed him by law. His refusal to claim that privilege at the outset of the proceedings can in no way estop him from afterwards asserting his right, provided he does so before he has entered on his defence. After that it would be too late. It may well be that an accused, before he has heard the evidence for the prosecution, may think the case had better be disposed of by the Magistrate himself, and that after he has heard the evidence he may see that it would be for his benefit to have the evidence submitted to a jury. I therefore hold that the Magistrate's opinion that it was too late on the 22nd of April to accede to the accused's request is erroneous. That request ought to have been granted, and after it was made, the Magistrate had no power to dispose of the case himself.

3. For this reason I quash the conviction and sentence, and direct that the Magistrate take up the case from the stage it had reached when the request was made, that he grant that request, and thereafter deal with the case according to law. If the accused was on bail during the trial he ought to be admitted to the same bail. If not, he will be detained as an under-trial prisoner until the conclusion of the

trial or until further orders. I note that at the conclusion of his judgment the learned District Magistrate says that he would have committed the case to the Court of Session if it had not been for the prisoner's youth, and the season of the year. If the accused or his counsel wishes the case to be committed, then, in my opinion, the District Magistrate would do well to accede to that wish.

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