

Emperor Vs. Jharihag

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Court : Allahabad

Decided On : Mar-17-1939

Reported in : AIR1939All541

Appellant : Emperor

Respondent : Jharihag

Judgement :

ORDER

1. These are four references from the learned District Magistrate, Mirzapur, under Section 561-A, Criminal P.C., relating to orders passed by the Sub-Divisional Officer, Mirzapur. The opposite parties were prosecuted for a breach of certain rules made with respect to the Mirzapur Stone Mahals under Section 11 of the Act. The learned Sub-Divisional Magistrate dismissed the cases for default of the prosecution. This Court can revise orders of the Criminal Courts only under Section 561-A, Criminal P.C. The orders under reference were passed by the Sub-Divisional Officer as Assistant Collector and not as a Magistrate. The cases were started under the Mirzapur Stone Mahal Act (Act 5 of 1886). The Act provides for the whole procedure for the trial of the cases under it. It appears from Sections 15 and 18 that the offences are to be tried by the Assistant Collector and not by a Magistrate. Under Section 15 the Collector with the previous sanction of the Commissioner may empower any officer to arrest the offender and seize any stone in respect of which the officer has reason to believe that, an offence under Section 11 or against a rule made under Rule 7 has been committed. Section 18 provides

for appeal and revision. Section 18 lays down:

18. (1) Decisions and orders passed under this Ad, or any rule thereunder by an Assistant Collector, whether as Collector or otherwise, shall be appealable to the Collector of the Mirzapur District in the manner provided by the law for the time being in force in the district respecting appeals from the orders of an Assistant Collector to the Collector in matters pertaining to land revenue.

(2) Decisions and orders passed by the Collector of the Mirzapur District under this Act or any rule thereunder shall be appealable to the Commissioner in the manner provided by the law aforesaid respecting appeals from the orders of the Collector to the Commissioner.

(3) The Local Government may revise any decision or order passed under this Act or any rule thereunder by an Assistant Collector, whether as Collector or otherwise, or by the Collector of the Mirzapur District, or under Sub-section (2) by the Commissioner.

2. It will appear from this Section that the appeals and revisions from the decisions and orders passed under the Act by an Assistant Collector are to be made in the first instance to the Collector in the manner provided by the law for the time being in force in the district respecting appeals from the orders of an Assistant Collector, to the Collector in matters pertaining to land revenue, and from the decisions and orders passed by the Collector to the Commissioner in the same manner. Under Clause (3) the Local Government has been given power to revise any decision or order passed under the Act or any rule thereunder by an Assistant Collector, whether as Collector or otherwise or under Sub-section (2) by the Commissioner. It is only in connexion with search warrants that the Criminal Procedure Code has been made applicable by Section 16. A search warrant has to be issued by a Magistrate and the search has to be made in accordance with the provisions of the Criminal P.C. Where it is intended that the offences committed under any special Act shall be tried by a Magistrate, or appeals or revisions shall be made to the High Court, special provisions have been made in the Acts. As for instance Section 307, D.P. Municipalities Act (Act 2 of 1916), makes a provision for the trial by a Magistrate of an offence of disobedience to notice issued under the Act.

Section 319 of the said Act also makes provision for a reference to the High Court. There is no such provision in the Mirzapur Stone Mahal Act. On the other hand, the provisions in the Act are to the effect that the appeals and revisions from the decisions and orders passed under the Act shall be made to the Collector, Commissioner or the Local Government. This Court therefore has no jurisdiction to interfere with the orders passed by the Sub-Divisional Officer and the references cannot be entertained. They are therefore rejected.

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