

Bhagwan Das Vs. Emperor

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Court : Allahabad

Decided On : Aug-19-1924

Reported in : AIR1925All218a; 84Ind.Cas.719

Appellant : Bhagwan Das

Respondent : Emperor

Judgement :

Mukherji, J.

1. These two Criminal Miscellaneous Cases No. 156 and No. 157 of 1924, have arisen out of a single reference made by the learned Sessions Judge of Meerut.

2. It appears that one Bhagwan Das was triad at the instance of one Siddiq Ali and was convicted under Section 504 of the Indian Penal Code by a summary trial, and was sentenced to pay a fine of Rs. 200. A revision against this conviction and sentence was filed before the Court of the learned Sessions Judge and was transferred to the Court of the learned Additional Sessions Judge hearing cases from Muzaffarnagar District. There was another criminal case against the same person, Bhagwan Das, and as the result of that case he was convicted of an offence under Section 298 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 300. Against this conviction and sentence Bhagwan Das appealed to the Sessions Judge of Meerut and the appeal in the ordinary course was transferred to the Court of the

Additional Sessions Judge hearing cases from Muzaffarnagar. At the instance of the learned District Magistrate of Muzaffarnagar the learned Sessions Judge got the records of the two cases and wanted to hear them himself. Objection was taken before him that it was not probably right for him to do so, as he had no jurisdiction to withdraw cases which had been transferred to the learned Additional Sessions Judge. The learned Sessions Judge has accordingly sent up this reference to this Court asking for a ruling whether he has got jurisdiction to hear the appeal and the application for revision; and, if not, requesting the Court to transfer the cases to his Court.

3. As a matter of procedure it may be pointed out for the guidance of Courts below that the Crown is as much a party before the Sessions Judge as the accused person. Any motion that has to be made before the Sessions Judge should, therefore, be through the Government Pleader and not by an 'official' or 'demiofficial' letter from the District Magistrate as representing the Crown. The proper course, therefore, should have been for the Government Pleader to make an application to the learned Sessions Judge to re-transfer the cases to his file.

4. Coming to the reason for transfer, it appears to me there is none at all. The learned Sessions Judge does not give any. The learned District Magistrate has taken exception to the order of the Additional Sessions Judge of Muzaffarnagar because he stated in his order, admitting the appellant in one case and applicant in the other to bail, that he had ordered the suspension of the sentence. 'When an appellate Court or a Court hearing a revision admits the appellant or the applicant to bail or orders that a fine should not be paid up till the disposal of the case, he thereby orders the suspension of the sentence. The learned District Magistrate does not take exception to the order as to bail, but he finds that there was no justification of the order suspending the sentence. As I have pointed out, the two are one and the same thing. It is clear, therefore, that there was nothing in the conduct of the Additional Sessions Judge of Muzaffarnagar which should have induced the Crown to desire that the case should be heard by any other Judge. The learned District Magistrate also pointed out to the learned Sessions Judge of Meerut that the cases had excited the two Hindu and Muhammadan communities of Muzaffarnagar and that it was therefore desirable that the cases should be

heard by a Judge who was neither a Hindu nor a Muhammadan. On principle, I deprecate this sort of proceeding. The officers of the Crown in the majority of cases are bound to be either Hindu or Muhammadan, and if parties are allowed to choose their Courts, it would not be easy to please them all. In those unfortunate cases in which an Indian and a European are arraigned on either side, if either party wants a Court the presiding officer of which is neither an Indian nor a European, it would be difficult to please him. On principle, therefore, it is to be regretted that the learned Sessions Judge of Meerut should have been asked to take up the cases.

5. In this particular case there is however one point, which is this, that Bhagwan Das, the appellant in one case, and applicant in the other, does not take exception to the learned Sessions Judge of Meerut hearing the appeal and revision. No doubt he says that if the learned District Magistrate so wishes, he would not mind if the cases be heard by the learned Sessions Judge of Meerut. Thus we have the fact that one party wants that the case should be heard by the learned Sessions Judge of Meerut and the other party agrees. In the circumstances I order that the two cases, namely the appeal and the revision, be re-transferred from the Court of the Additional Sessions Judge of Muzaffarnagar to the Court of the Sessions Judge of Meerut.