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Emperor Vs. Hadiyar Khan

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Court : Allahabad

Decided On : Sep-04-1918

Reported in : (1919)ILR61All197

Judge : Tudball, J.

Appellant : Emperor

Respondent : Hadiyar Khan

Judgement :

Tudball, J.

1. The appellant Hadiyar Khan has been convicted of the offence of perjury and has been sentenced to four years' rigorous imprisonment, including three months' solitary confinement, by the learned Sessions Judge of the Naini Tal district. The circumstances under which the appellant was tried and convicted are somewhat unusual. Two men, Aziz-ullah and Kifayat-ullah, were upon their trial in the Court of Session at Pilibhit on a charge of attempted murder under Section 307 of the Indian Penal Code. Hadiyar Khan was called as a witness for the defence to prove that Aziz-ullah was actually dining with him at the time the offence is said to have bean committed. The trial of Azizullah and Kifayat-ul-lah concluded on the 2nd of August, 1918, at about 5 p.m. and the judge convicted them and sentenced them to ten years' rigorous imprisonment under Section 307. On that very same date, namely the 2nd of August, 1918, the judge passed an order issuing notice to the

defence witnesses to show cause why they should not be prosecuted for the offence of perjury. Then the learned Sessions Judge changed his mind at once in respect to the present appellant Hadiyar Khan. As a perusal of his judgment will show, his attention was called to the provisions of Section 477 of the Code of Criminal Procedure, and he there and then proceeded to try Hadiyar Khan, under the powers granted by that section, for the offence of perjury which he charged against him. I have examined the record of the trial. Hadiyar Khan asked the Sessions Judge for time to enable him to appoint) a lawyer and to consult him so as to enable him to put in his defence. The Sessions Judge declined to adjourn the case or to give him any further time, whereupon Hadiyar Khan refused to plead or to take any steps in his defence. As the judge's judgment shows, he began the case against Hadiyar Khan at 5 o'clock and Hadiyar Khan from the very beginning asked for a postponement. Postponement was refused. He therefore refused to cross-examine. He refused to make any attempt to defend himself. He asked repeatedly to be allowed to obtain legal advice. The judge declined to give him any further time and on the evidence taken in the presence of the accused he convicted him and sentenced him as mentioned above. He remarks in his judgment: 'Section 477 demands a prompt and speedy decision which will bring home to the public generally the dangers a man runs in giving false evidence. I am not going to spoil the effect of Section 477 by weakly granting a postponement, which would only mean that the accused would then be able to produce another lot of false witnesses leading to nothing,' Section 477 grants a power which is very seldom exercised. It gives the power to a Court of Session to charge a person for any offence referred to in Section 195 and committed before it. It further gives the Court of Session the power to commit for trial or to admit to bail and to try the person for the charge it has framed, but the section nowhere lays it down that the trial is to be a summary trial nor does the section anywhere demand a decision which should be more prompt and speedy than that of any ordinary trial. The very powers granted in that section to a Court of Session are so unusual that it seems to me it is the bounden duty of any court exercising them to be at pains to give the accused a fair and impartial trial, in view of the fact that the court has already had before it certain evidence upon which it may have already formed an opinion. I should have thought that a simple sense of justice would Have shown to the court

below that Hadiyar Khan was entitled to appoint a pleader, to consult with him and to defend himself just as any ordinary person in an ordinary criminal trial. The learned Sessions Judge has in his haste made it impossible for Hadiyar Khan to defend himself. He refused to grant a postponement which he certainly ought to have granted, whatever the result, and in my opinion in view of the expressions which he had already used in his judgment in the case against Aziz-ullah and Kifayat-ullah, it would have been fairer perhaps to have dealt with Hadiyar Khan in the same manner as that in which he had dealt with the remaining defence witnesses, that is of taking action against them under Section 476. It is impossible to say that the learned Sessions Judge had not power to try the case. He certainly had the power to do so, but in the exercise of his jurisdiction he has, in my opinion, acted hastily and very irregularly and has not given the appellant a fair trial. In these circumstances without expressing any opinion as to the appellant's guilt, I set aside the conviction and sentence. The case must be re-tried but it is obvious that it cannot be re-tried in the same court. It must be transferred to a calmer atmosphere so as to enable an impartial trial to be held. I therefore direct that the case be re-tried in the Court of the Sessions Judge of Bareilly instead of in the Court of the Sessions Judge of Kumaun.

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