

Emperor Vs. Phulel

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Court : Allahabad

Decided On : Nov-29-1912

Reported in : (1913)ILR35All102

Judge : Tudball, J.

Appellant : Emperor

Respondent : Phulel

Judgement :

Tudball, J.

1. The applicant Phulel went to the District Magistrate and made a statement before him that a certain police officer had beaten him, demanded a bribe from him and locked him in the police hawalat. He added that he did not wish to make a complaint, as it would not be possible to prove the complaint, but he wished the District Magistrate to make an inquiry so as to prevent the police officer behaving tyrannically towards him. In spite of the fact that he stated that he did not wish to make a complaint, the Magistrate made him take the oath and make a statement. Inquiry disclosed that the charge was groundless. Phulel was put on his trial under Sections 211 and 182, Indian Penal Code. The Magistrate came to the conclusion that Section 211 did not apply as the man distinctly refrained from instituting a complaint, but held that he was guilty of offences under Sections 182 and 193, Indian Penal Code, and sentenced him to separate sentences for each of those

offences. On appeal the learned Additional Judge held that the man had committed only one offence and that he should not be punished twice over for the same act. He held that the facts established an offence under Section 193, Indian Penal Code. He maintained the conviction and sentence under that section and set aside the conviction and sentence under Section 182. It is quite clear that when the applicant stated that he did not wish to institute criminal proceedings or make a complaint, the Magistrate was not moved qua Magistrate, but only as district head of the police. It was unnecessary and perhaps unlawful for the Magistrate under these circumstances to have forced the man to take an oath. As the Additional Judge has said, the man committed only one offence. He either committed an offence under Section 182 or 211, Indian Penal Code. The conviction under Section 193 cannot stand. I, therefore, alter the finding of the court below to a conviction under Section 182, Indian Penal Code, and I maintain the sentence of three months' rigorous imprisonment which was originally imposed under that section.

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