

Rozan and ors. Vs. Emperor

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Court : Allahabad

Decided On : Jan-16-1930

Reported in : AIR1930All658

Appellant : Rozan and ors.

Respondent : Emperor

Judgement :

Dalal, J.

1. I am not surprised at the Magistrate being confused by the inartistic provisions of Ch. 10, Criminal P.C. What is meant by the provisions of Section 139(2) is that when a Magistrate finds that there is reliable evidence in support of the denial by the defendant of the plaintiff's claim of public right, all he has to do is merely to stay the proceedings until the matter of the existence of such right has been decided by a competent civil Court. The provisions of Section 140(1) do not apply to such stay and the Magistrate cannot compel either party to go to the civil Court. The purpose of this new section introduced in 1923 is clear. The plaintiff in the criminal Court makes a claim and a defendant denies it. If the denial is proved the criminal Court holds its hand and it will be the business of the plaintiff to bring a civil suit if he likes. If he does not, the denial is maintained. If he does bring a suit and succeeds the Magistrate may proceed to pass an order absolute under Section 140(1). When the opinion of the Magistrate was in favour of the applicants,

Rozan and others, the Magistrate had no jurisdiction to direct Rozan and others to go to the civil Court. The Magistrate's order of 20th July 1929, subsequent to the sentence:

I stay the proceedings till the matter of the existence of such right has been decided by a competent civil Court

is cancelled.

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