

Pitambar and anr. Vs. King-emperor

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SooperKanoon Citation : sooperkanoon.com/460607

Court : Allahabad

Decided On : Apr-07-1927

Reported in : AIR1927All567

Appellant : Pitambar and anr.

Respondent : King-emperor

Judgement :

Walsh, J.

1. I have no materials before me in this appeal to enable me to differ from the finding of the Additional District Judge. The District Judge has come to a conclusion somewhat different from that of which the defendant himself took up in his defence. He appears to think that both parties have been misleading the Court as he is definitely of opinion that the thumb-impression is that of the defendant which the defendant denies. On the other hand, he has come clearly to the conclusion that the promissory note, then, though originally bearing the thumb impression of the defendant, has been materially altered. He does not appear to have made up his mind whether it is an entire fabrication or merely a subsequent alteration. Both those alternatives would amount to altering a forged document, but Mr. M(sic)shtaq Ahmad rightly points out on behalf of the appellant that the conclusion at which the learned Judge has arrived in his finding as to the existence of a prima facie complaint is in the alternative. I do not think that is

sufficient to comply with the section. For example, you would not satisfy the section by recording a finding of two alternative offences, which were mutually inconsistent. What the section requires is that the Court may after such preliminary enquiry as it thinks necessary (and it is clear in this case that the District Judge in hearing and deciding the appeal has made all the preliminary enquiry which he considered necessary), record a finding to the effect that an offence appears to have been committed and make a complaint thereof in writing signed by him as the presiding officer of the Court and forward the same to a Magistrate of the first class having jurisdiction. The action taken by the District Judge appears to have been based upon the practice, which existed under the old section. It is possible that he did not study the provisions of the existing section, or, if he did, failed to observe the duty imposed upon him. In order to comply with the section he must record a finding that an offence or offences have been committed and he must make a complaint in writing signed by him and setting out the particulars of each of such complaints which he intends to forward to the Magistrate.

2. It seems to me, therefore, that the proper course is to return the record to the District Judge and to ask him to complete the matter in accordance with the provisions of the section. Therefore, the stay order will continue until the matter is put rightly according to law.