

**Malik and ors. Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/461033](http://sooperkanoon.com/461033)

**Court :** Allahabad

**Decided On :** Jul-30-1924

**Reported in :** AIR1925All282

**Appellant :** Malik and ors.

**Respondent :** Emperor

**Judgement :**

**Boys, J.**

1. This is another ease arising out of the same rioting which was the subject of Grim. Revn. No. 247 of 1924 : AIR1925 All285 which I have just dealt with and which was tried by the same Magistrate. The objection taken in revision here and it was also made a ground of objection before the learned Sessions Judge is again an objection to the procedure of the Magistrate and again the facts are evidenced that the Deputy Magistrate is guided too much by the letter of the law than by the spirit and proper practice of it. In this case it has been stated on affidavit that before he passed orders in the case the Magistrate was requested to give time so that a vakil might be called from the Civil Courts to submit arguments. The Deputy Magistrate does not say that this statement is false but merely says that he has no recollection of having said so and that he finds no corroboration from the record. I have the statement of fact made to me in an affidavit which is moreover endorsed on the back of it by the vakil who appeared. I therefore take it as true. In paragraph

No. 7 of the affidavit it is sworn 'that the Magistrate said that the pleaders for the accused had no legal right to submit arguments and that he did not want to hear arguments'. The Deputy Magistrate does not say that this statement of fact is false but his reply goes all round it by saying that the allegation is perfectly groundless and goes on to support this by saying that there was no reason for him to refuse. In view of the way the Deputy Magistrate dealt with the case Criminal Revision No. 247 of 1924 in which I have just passed orders it seems to me that a similar view would very probably be taken by him that the accused had no right to be heard in argument. Literally, again, the Code does not provide for such a right of the accused. But there cannot be the slightest question that it is the invariable practice of all Magistrates' Court to hear the accused at the end of the case and the Magistrate ought indubitably to hold himself bound by such practice. In an analogous case there is no right of reply given to the accused or his Counsel in an appeal in the Sessions Court, but it has been held by this Court in *Radha Raman v. Emperor Cr. Revn. No. 699 of 1909* that it is the invariable practice in the High Court and by implication that practice should be conformed to in the Sessions Court. It appearing that in this case the accused were not allowed a proper opportunity of being heard in argument I set aside the convictions and sentences and the proceedings from the stage immediately before judgment and direct that an opportunity be given to the pleader for the accused to argue the case for his clients. I am informed that the Magistrate has been transferred. In any case, the arguments will be heard and the case decided by some other Magistrate as the District Magistrate may think fit.

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