

Kalka Vs. Emperor

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Court : Allahabad

Decided On : Aug-19-1924

Reported in : AIR1925All291

Appellant : Kalka

Respondent : Emperor

Judgement :

Mukerji, J.

1. This is one of the cases in which, in my opinion, the Criminal Court ought not to have assumed jurisdiction. The applicant was charged with an offence under Section 426 of the Indian Penal Code on the allegation that he cut certain trees which belonged to the zemindar and to cut which the applicant had no right. The applicant met the case with the plea that the trees stood on his own land and that he had a right to cut them. I have carefully read-the judgment of the learned Magistrate. The whole judgment is based on the question whether the tree has been proved to be the property of the zemindar or that of the tenant. It is clear from this judgment that what the applicant did he did openly and deliberately. He not only claimed the trees as his own, but he sold them to a third party who has evidently acted in good faith and has not been prosecuted. A good deal of evidence was adduced on either side and the patwari who was examined for the land-holder supported the applicant. The learned Magistrate found that there was

some custom in the village by which a tenant could cut a tree. But he finds that the custom did not extend to a sale of the timber cut. This may be so or may not be so. But it appears to me the title to the tree was a matter of bona fide contest on the part of the applicant and the complainant should have been referred for his relief to the Civil Court. I find that it has not been proved that the trees were sold and cut with the intention of causing loss to the zemindar, but in pursuance of a bona fide claim to the trees and therefore no offence of mischief has been committed.

2. I set aside the conviction and sentence and order that the fine, if paid shall be refunded.

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