

Emperor Vs. Tilak Rai and ors.

Emperor Vs. Tilak Rai and ors.

SooperKanoon Citation : sooperkanoon.com/462441

Court : Allahabad

Decided On : Dec-17-1920

Reported in : (1921)ILR43All372

Judge : Pramada Charan Banerji, J.

Appellant : Emperor

Respondent : Tilak Rai and ors.

Judgement :

Pramada Charan Banerji, J.

1. This is an application for revision of an order of an appellate court directing the applicants to furnish security to keep the peace under Section 106 of the Code of Criminal Procedure, The applicants were convicted by a Magistrate of the second class of the offence punishable under Section 352 of the Indian Penal Code and each of them was sentenced to a fine of Rs. 10. They appealed. The appellate court dismissed their appeals, but held that as there was a long-standing feud between the complainant and the accused, it was desirable to order the accused to furnish security under Section 106 of the Code of Criminal Procedure. It is contended on behalf of the applicants that as the court of first instance, which had the powers of a second class Magistrate only, was not competent to order security to be furnished under Section 106, the appellate court was also incompetent to make such an order, and it is urged that the appellate court could not only exercise

such powers as the court of first instance could have done, and as in the present instance the court of first instance could not have ordered security to be furnished under Section 106, the appellate court could not have made an order under that section. It is further contended that the case was not one in which an order under Section 106 ought to have been made, As regards the first point the matter is concluded by the decision of this Court in Emperor v. Dharam Das (1910) I.L.R. 33 All. 48. That was a decision of a Division Bench of two Judges and I am bound to follow it. There are no doubt decisions of the Calcutta and Madras High Courts to the contrary, but the learned Judges who decided the case referred to above did not agree with the rulings of the Calcutta and the Madras Courts and agreed with a decision of the Bombay High Court to which they referred in their judgment. It seems to me that Sub-section (3) of Section 106 is wide enough to include an appellate court, whatever may have been the powers of the original trial court from whose decision the appeal was heard. Sub-section (1) specifies the different descriptions of courts which could make an order under the section and Sub-section (3) adds another class of courts to the courts mentioned in Sub-section (1), namely, appellate courts. Had the object of the Legislature been to limit the powers of the appellate court, one would expect to find in that sub-section a limitation of the powers of the appellate court such as we find in Section 139 of the Code of Criminal Procedure in the case of enhancement of a sentence passed by a Magistrate of the first class. However, as there is a decision of two Judges of this Court on the subject which is against the applicants, I feel myself bound by that decision and I see no reason to differ from it. As regards the second point raised, it appears that there has been enmity between the parties for some time and that the accused deliberately lay in wait to commit an assault on the complainant. In these circumstances, although the assault actually committed was not so severe as to justify a heavy sentence, the appellate court cannot be held to have exercised its discretion unwarrantably in directing the applicants to furnish security. For these reasons I dismiss the application.