

Emperor Vs. Lachmi Datt

Emperor Vs. Lachmi Datt

SooperKanoon Citation : sooperkanoon.com/462449

Court : Allahabad

Decided On : Jun-07-1928

Reported in : AIR1928All672

Appellant : Emperor

Respondent : Lachmi Datt

Judgement :

Sulaiman, Ag. C.J.

1. Lachmi Dat was a combatant driver in the 14 Infantry Brigade Transport Company. He was also attached as orderly to Risaldar Lal Singh. It is alleged that he dishonestly abstracted notes of the value of Rs. 4,000 from a steel trunk over which he had been ordered to keep guard, and then bolted away. After considerable difficulty he was arrested at Rangoon and brought over to these Provinces and charged under Section 408, I.P.C. The Magistrate took evidence and committed him to the Court of Sessions. The military authorities considered that this was a case for trial by a military Court, and requested the Sessions Judge to hand over the prisoner to them. The learned Sessions Judge has referred the matter to the High Court with a recommendation that the commitment be quashed. In the meantime he has taken steps to hand the accused over to the military authorities.

2. Criminal breach of trust by a servant is an offence triable both by military and criminal Courts, but the offence of desertion can be tried by a military Court only.

3. Section 69, Army Act (Act 8 of 1911) provides that where a criminal Court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the prescribed military authority to decide before which Court the proceedings shall be instituted, and if that authority decides that they shall be instituted before Court-Martial, to direct that the accused persons shall be detained in military custody. It is therefore clear that it rests entirely with the discretion of the prescribed military authority to decide whether the offence should be tried by a Court-Martial or not.

4. The regulations for the army in India define the prescribed military authority as being the Officer Commanding the Army, Army Corps, Division, Brigade, or station in which the accused person is serving. The letter from the Colonel Commandant at the headquarters shows that the prescribed military authority wants the accused to be tried by a military Court.

5. No doubt under Section 70, Sub-clause (1), Army Act, a criminal Court, when it is of opinion that proceedings ought to be instituted before itself, can require the prescribed military authority to refer the question of jurisdiction to the Governor General-in-Council, but as the offence of desertion cannot be tried by a criminal Court at all, this is obviously not a case in which such a reference could be thought of. The mere fact that the accused was arrested by the police, and was put up before a Magistrate, and the case has proceeded to some length, cannot make any difference. It would no doubt have saved the time of the Court if the military authorities had been consulted by the Court, or if the military authorities had themselves decided earlier that the accused should not be tried by the ordinary criminal Court.

6. I accordingly order that the commitment to the Court of the Sessions Judge of Kumaun be quashed, and the accused, if he has not already been delivered over to the military authorities, be handed over to them.

