

Emperor Vs. Ghariba and ors.

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SooperKanoon Citation : sooperkanoon.com/464995

Court : Allahabad

Decided On : Oct-29-1923

Reported in : (1924)ILR46All109

Judge : Walsh, J.

Appellant : Emperor

Respondent : Ghariba and ors.

Judgement :

Walsh, J.

1. I am not prepared to interfere in this case. It must be assumed that the Magistrate had some evidence of the likelihood of a breach of the peace being committed by these men before he issued notice. I am inclined to think that I went too far by saying in Jagdat Tewari v. Emperor (1920) 54 Indian Cases. 784, that there must be some evidence upon the record beyond a full consent to be bound over, given by the person summoned. I find that each of these persons had the notice read out to him and in answer to the notice expressed his willingness to execute a bond for Rs. 100 to keep the peace. This is in itself evidence on which a Magistrate can act. It is really a plea of guilty, assuming the person summoned understands what he is doing. A man may waive the formal production of evidence against himself. By doing so he saves himself and the court unnecessary trouble, and he may well consider in the case of a notice, the reason for which he

doubtless understands perfectly well, that the evidence against him is sufficient to justify his consenting to an order. I see that in the notice of appeal to the Sessions Judge the objection was taken, no doubt by the lawyer, that the appellants expressed no willingness to execute the bonds, and even if they did so, the court could not make an order under the law in the absence of any evidence. I am afraid that it too often happens that a trick is played upon the court, which is induced to make an order by consent, so as to avoid the production of formal evidence, and in order to found an argument for the court of appeal. I think a court under Section 107 is perfectly entitled to act upon a solemn consent given before it by the accused person as was done in these cases. I can quite understand the Sessions Judge taking the view that he did upon the authorities, but on reconsideration I think I went too far in the case cited above. The case decided by Mr. Justice Piggott, *Emperor v. Mul Ghand* (1914) I.L.R. 37 All. 30, was very different. There was no inquiry at all. I do not agree with the decision in *Ram Chandra Halder v. Emperor* (1908) I.L.R. 35 Calc. 674. In the case before Mr. Justice Ryves, *Chander Shelchar v. Emperor* (1919) 54 Indian Cases 411, also there was no inquiry. I still think that it would be better for a Magistrate to take formal evidence, and to have an admission on the record, but I do not agree with the view which I formerly took that a consent may not amount to an admission. In any event I should have done as I did in that case, and sent the case back, but I have come to the conclusion that this is superfluous where after due inquiry and notice, a free consent amounting to a plea of guilty has been given. I may add that I have consulted Mr. Justice Ryves, and another Judge of this Court, and both agree with the view I have taken here. Let the record be returned.