

Musammat Mithani Vs. Emperor

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Court : Allahabad

Decided On : Feb-28-1912

Reported in : 14Ind.Cas.203

Judge : George Knox, J.

Appellant : Musammat Mithani

Respondent : Emperor

Judgement :

George Knox, J.

1. This is an application for revision. It appears that Musammat Mithani brought a complaint against one Ganga Pershad charging him with an offence under Section 406, Indian Penal Code. The complaint was filed in the Court of one Saiyed Abu Muhammad, who is said to have been at the time Magistrate in charge of the local area known as the Auraiya Sub-Division, District Etawah. He transferred the case for trial to one Suraj Din Bajpei, a second class Magistrate, This last Magistrate tried the case, came to the conclusion that the charge had been established against Ganga Pershad and that it required a severer sentence than he could inflict. He accordingly submitted the record back under Section 349 to Saiyed Abu Muhammad. The case reached the Court of Saiyed Abu Muhammad on the 12th of October 1911. On the 15th of October 1911, the District Magistrate of Etawah issued an order defining the Sub-Division Auraiya as the local area in which one

Mr. Nauak Chand was to exercise criminal powers.

2. The case of Ganga Pershad, however, remained on the file of Saiyed Abu Muhammad, who on the 18th of October 1911, directed that the accused Ganga Pershad be acquitted. Musammat Mithani comes to this Court and asks that the case be sent for and dealt with in revision.

3. The grounds for interference as set forth by her are that on the 15th of October 1911, Saiyed Abu Muhammad gave over charge of the Auraiya Sub-Division to Mr. Nanak Chand and ceased to have jurisdiction in this case. It is contended that on the 15th of October 1911 all the cases pending on the file of Saiyed Abu Muhammad passed automatically into the hands of Mr. Nanak Chand and that the former had no jurisdiction in such cases and the suggestion is that he picked out this case and retained it illegally and that his order of acquittal is illegal. I know of no authority in the Code of Criminal Procedure which lays down that cases on the file of one Magistrate in a district pass automatically to his successor in the local area, merely because the former has been transferred to another local area in the same District. Such procedure is obviously inconvenient and the natural order would be that whatever cases a Magistrate had had seized of before the order of transfer issued would remain on his file, always supposing that he is merely transferred to another local area in the same District, and would be disposed of by such Magistrate. Section 12 of the Code of Criminal Procedure does not lay down any such automatic rule and such used not to be the custom which prevailed under the former Code of Criminal Procedure. However that may be, there is in the present Code Section 531, which lays down that no order of any criminal Court shall be set aside merely on the ground that the proceeding in which it was passed took place in the wrong sub-division unless such error has occasioned a failure of justice. It has not been pointed out to me that the mere fact that the case remained on the file of Saiyed Abu Muhammad and did not pass to the file of Mr. Nanak Chand, occasioned any failure of Justice. What we have really to deal with is an order of acquittal and the Magistrate of the District is always there to move this Court if it is a wrong order.

4. The application is dismissed.

