

Durga Prasad and anr. Vs. Emperor

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Court : Allahabad

Decided On : Aug-03-1915

Reported in : AIR1915All388(1); 30Ind.Cas.651

Judge : George Knox, J.

Appellant : Durga Prasad and anr.

Respondent : Emperor

Judgement :

George Knox, J.

1. The District, Magistrate of Banda in this case appears to have seen Police papers of some kind and then and there to have instituted a case under Section 195 of the Indian Penal Code against two persons, Durga Prasad and Mohiuddin. The utmost 'that appears from the record is that apparently in the eyes of the Police, Durga Prasad and Mohiuddin 'got at' one Musammat Putia, and persuaded her to make a statement to the effect that she had seen certain persons whom she mentions by name, in the act of committing dacoity on her premises, that they apparently persuaded other persons to make statements to the same effect. Assuming for the moment that this is an accurate statement of what did take place, it would not still amount to an offence under Section 195 of the Indian Penal Code. There was no giving of false evidence at that time before the learned District Magistrate. There was no fabricating of false evidence as defined in Section 192 of

the Indian Penal Code. The order for the prosecution of these persons was evidently hastily given without due consideration as to whether there was any basis for the charge. I laid down in *Emperor v. Tabarak Zaman Khan A.W.N.* (1907) 288 : 4 A.L.J. 790 : 30 A. 52 : 6 Cr. L.J. 396 that in cases of this kind the safer and more proper course is undoubtedly to let the informant bring his witnesses to the Court, hear them out, and then pass an order, if the case is considered to be a false one, to the effect that the informer be tried for having instituted a false case. That would have been the proper procedure. In the present case I need not go into the question whether the Magistrate who does not observe this procedure is acting without jurisdiction. I am satisfied that the learned Magistrate had before him no basis on which he could pass the order he did.

2. I, therefore, set aside that order in its entirety. Durga Prasad and Mohiuddin if on bail, the bail bonds will be discharged.

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