

Mt. Ram Kunwar and ors. Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/465932

Court : Allahabad

Decided On : Aug-04-1930

Reported in : AIR1930All835; 129Ind.Cas.259

Appellant : Mt. Ram Kunwar and ors.

Respondent : Emperor

Judgement :

ORDER

Bennet, J.

1. This is a reference by the learned Sessions Judge of Etah recommending that the convictions of five persons under Sections 147, 352 and 447,1. P.C., and sentences of one month's rigorous imprisonment and fines should be set aside. The ground of the recommendation is that the Honorary Third Class Magistrate before whom the accused were tried did not comply with the provisions of Section 526(8), Criminal P. C, because he did not grant a sufficient adjournment for the accused to apply for a transfer. This sub-section applies only where the complainant or the accused notifies to the Court before which the case is pending his intention to make an application under Section 526. Section 526, Sub-section (1) refers to the High Court, and the whole section deals only with applications for transfer made to the High Court. It has to be shown therefore by the applicant in revision that the Honorary Magistrate was informed that the accused intended to

make an application to the High Court for transfer. Two applications are relied on by the learned counsel for the applicant in revision. The first application is dated 21st December 1929 and merely states that the accused want their case to be transferred to another Court and ask that the case should be postponed for 15 days. The second application of 23rd December merely refers to the first application. In neither of these applications is there any statement that the accused intended to apply to the High Court for a transfer under Section 526. The applicants in revision have not furnished any evidence by way of affidavit or otherwise to show that they had any such intention.

2. So far as the record goes it is apparent that their intention was merely to apply to the District Magistrate, and the learned Sessions Judge notes that an application to the District Magistrate by the accused dated 20th December 1929 was shown to him. He states that he is forwarding this application to this Court, but neither counsel nor the Peshkar could discover this application on the record. Its (contents) therefore are uncertain, for on the one hand the Sessions Judge states that it was not an application for transfer and on the other hand the Honorary Magistrate stated that it was an application for transfer. Be that as it may, the onus lies on the applicants in revision to show that the information required by Section 526, Sub-section (8) was given to the Honorary Magistrate. They have failed to show that such information was given. Accordingly there is nothing illegal in the trial, and there is no ground on which this Court could interfere in revision. Therefore the reference is not accepted. Let the record be returned.