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Mata Prasad Vs. Emperor

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Court : Allahabad

Decided On : Sep-17-1919

Reported in : AIR1919All373; 53Ind.Cas.609

Judge : Ryves, J.

Appellant : Mata Prasad

Respondent : Emperor

Judgement :

Ryves, J.

1. In this case Mata Prasad was tried by a Magistrate on a charge under Section 420 of the Indian Penal Code and acquitted. He had pawned six rings which he said were of gold It appeared subsequently that they were not made of gold but were made of silver gilt. The question was whether he knew that the rings were not what he suggested them to be, The Magistrate after examining the evidence for the prosecution came to the conclusion that he did not, or at any rate, gave him the benefit of the doubt. The reasons which he gave for coming to that conclusion seem to me sound. The District Magistrate, however, has ordered a retrial; presumably he means a further enquiry. It does not appear from the record that he issued any notice to the accused before doing so. It has been ruled in this Court consistently from the Full Bench case reported in Queen-Empress v. Chotu 9 A. 52 (E. R.); A. W. N. (1886) 281; 5 Ind. Dec. (n. s.) 465. down to the case of Dost

Muhammad Khan v. Emperor 15 A. L. J. 627. that before a Magistrate takes action under Section 437 of the Criminal Procedure Code, he should give notice to the accused. I must say in my opinion I think it is scarcely necessary to have a retrial in this case, but if the Magistrate is still of that opinion, then he will give notice to Mata Prasad and give him an opportunity of showing cause as to why an order should not be passed to his prejudice. I may point out that the onus of proving the offence in this case, the guilty knowledge, lies on the prosecution. I allow the application and set aside the order of the learned Magistrate and direct that the record be returned.

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