

Emperor Vs. Brahmadin

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Court : Allahabad

Decided On : Jul-28-1927

Reported in : AIR1927All727a

Appellant : Emperor

Respondent : Brahmadin

Judgement :

Sulaiman, J.

1. This is a criminal reference made by the District Magistrate and forwarded by the Sessions Judge. Brahmadin was prosecuted under Section 110, Criminal P.C. Quite a volume of evidence was produced by the prosecution and the defence. The learned Magistrate who tried the case came to the conclusion that though the prosecution evidence excelled the defence evidence in quantity it was not of a convincing nature to warrant the accused being bound over. He accordingly discharged him on the 23rd May 1927.

2. On the 5th June 1927, the prosecuting inspector submitted to the District Magistrate a representation through the Superintendent of Police discussing the evidence at great length and trying to meet the various points mentioned by the trying Magistrate in his judgment. He expressed his own view that a re-trial was necessary and then enumerated four grounds of appeal. On this representation the District Magistrate examined the record and made a note on record on the 10th

June 1927, expressing his opinion on certain points, but without definitely stating that he intended to report the matter to the High Court. The trying Magistrate took this note to be a report to the High Court recommending the setting aside of his order. He accordingly submitted an explanation. The learned Magistrate then forwarded the record of the case.

together with the grounds of appeal made out by the police, the Sub-Divisional Magistrate's explanation and a copy of the note of 10th June 1927, with the recommendation under Section 438, Criminal P. C, that the accused be ordered to be bound over.

3. The police had brought the case to the notice of the District Magistrate possibly hoping that an appeal might be preferred on behalf of the Government. The sections of the Code of Criminal Procedure do not, however, contemplate that a representation made by the police to the District Magistrate in the form, of an official letter should be taken into consideration by the High Court as embodying the grounds for setting aside an order passed by a criminal Court. The learned District. Magistrate was quite wrong in treating this representation as a part of a judicial proceeding and forwarding it to the High Court.

4. The note made by the District Magistrate on the 10th June 1927 cannot be treated as a report to this Court, which it does not purport to be. His report is of the 4th July 1927, but that contains no analysis of the proceeding, nor indicates the portion of the finding recommended for revision, nor states the grounds upon which that finding is to be reversed. It is an incomplete document (practically the whole of which has been reproduced by me) and is not at all in compliance with Rule 6 or Chap. 2(10) of the General Rules (criminal) which lays down what a report to the High Court should contain.

5. On the merits too I am of opinion that this is not a fit case for interference. The police had represented that the case should be ordered to be re-tried because there had not been a due appreciation of the weight of the evidence on the record. The District Magistrate, on the other hand, has recommended that the accused should be ordered by the High Court to be bound over. It has not been suggested that any evidence which was of importance had been excluded. The only ground

suggested for the exercise of the revisional powers of this High Court is that the reasons given by the trying Magistrate in rejecting the prosecution evidence are open to objection. It may be that if another Magistrate had tried this case he might have come to a different conclusion. But that is not a sufficient ground for ordering a re-trial, much less for ordering that the accused should be bound over. It cannot be said that the Magistrate has committed any irregularity of procedure or any illegality or that his conclusion is necessarily perverse. If the police can collect further evidence against the accused, there is nothing to prevent fresh proceedings being taken against him in the future. I decline to interfere. Let the record be returned.

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