

Mathura and ors. Vs. Emperor

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Court : Allahabad

Decided On : Feb-10-1933

Reported in : AIR1933All355

Appellant : Mathura and ors.

Respondent : Emperor

Judgement :

ORDER

Bajpai, J.

1. The applicants before me were convicted by a Bench of Honorary Magistrates at Jaunpur under Sections 323 and 452, Penal Code. Their convictions were affirmed in appeal by a Magistrate of the First Class with appellate powers. A revision filed by them before the Additional Sessions Judge of Jaunpur was also dismissed. In revision before me it is argued that the conviction is illegal inasmuch as there was a defect in the constitution of the Bench. The facts are that there is a Bench of Honorary Magistrates of Jaunpur consisting of three members (1) B. Sundari Prasad (2) B. Lakshmi Shankar and (3) Maulvi Md. Abbas Khan. The present trial commenced before all the three Magistrates but at some of the subsequent hearings Maulvi Md. Abbas Khan was not present. The other two Magistrates however present at all the hearings including the first and last and it is these two Magistrates who delivered the judgment. It is contended before me that

inasmuch as the trial commenced before three Magistrates the trial should have continued before the same three and the fact that Maulvi Md. Abbas Khan was absent at some of the hearings and at the time of the delivery of judgment makes the trial invalid, and the judgment passed by the other two Magistrates is liable to be set aside.

2. Under Section 15, Criminal P.C., the Local Government may direct any two or more Magistrates in any place outside the Presidency Towns to sit together as a Bench. In the present case the Local Government has directed three Magistrates at Jaunpur to constitute a Bench. It is absolutely necessary under Section 15 that the Bench should consist of at least two Magistrates and on that score there is no defect in the constitution of the Bench. Under Section 16, Criminal P.C., the Local Government may or subject to the control of the Local Government the District Magistrate can make rules for the guidance of Magistrates' Benches. The District Magistrate of Jaunpur has framed certain rules under Section 16 and the rule as supplied to me at the Bar runs as follows:

Two Magistrates shall form a quorum ; and the same two Magistrates must hear a particular case from start to finish and sign the judgment except when under Section 850-A, Criminal P.C., there has been a change in the constitution of the Bench, for example some particular Magistrate has ceased to work temporarily or permanently under proper orders.

3. The position therefore is that in Jaunpur two Magistrates form the quorum of the Bench and under the rule just mentioned the same two must hear a particular case from start to finish and sign the judgment. In the present case when the case was started there were three Magistrates and throughout the conduct of the case there was a quorum of two and the judgment was delivered by those Magistrates only who were present throughout the case. I am therefore of the opinion that the trial is not irregular. It is however argued that the constitution of the Bench at the inception of the trial was of three Magistrates and therefore this number became rigid and inflexible for all the subsequent hearings and therefore the facts that certain hearings took place before two of the Magistrates only and the fact that the judgment was delivered by two only makes the trial illegal. No authority has been

cited for this proposition but certain cases having an indirect bearing have been placed before me from which it was argued that there has been a defect in the constitution of the Bench at some of the hearings and therefore I should order a retrial. The strongest case on behalf of the applicants is the case of Emperor v. Mohidin Karim A.I.R. 1920 Bom 300. In this case a Bench of three special Magistrates heard the prosecution evidence, but owing to the absence of one of the Magistrates later on the remaining two went on with the trial, heard the defence evidence and convicted and sentenced the accused. It was held that the trial was void but this decision was arrived at by reason of Rule 4 of the Rules for the guidance for the special Magistrates Bench there. That rule runs as follows:

It for any cause it is found necessary to adjourn the hearing of the case after the evidence has been partly taken the trial must be completed before the same Magistrates who commenced it or must be held afresh before a different set of Magistrates.

4. That case therefore has no application to facts of the present case. Next, reliance was placed upon the case of Chiteshwar Dube v. Emperor : AIR1932 All127 . I sent for the record of this case and from it I find that the Bench at Ghazipur consisted of three Magistrates (1) Pt. Paras Ram (2) Pt. Lachhmi Narain and (3) Maulvi Abdul Mughni. The last however was not present on several occasions when witnesses were examined but he joined in signing the judgment. The trial was held to be invalid. I am in perfect agreement with this view. In that case although two of the Magistrate's who took part in the decision had heard the evidence throughout it is impossible to say to what extent their opinion was influenced by the third Magistrate who had only heard a portion of the evidence. In the case before me the presence of Md. Abbas Khan was unnecessary because the quorum consists of two Magistrates and he was not a party to the judgment and therefore he did not in any way influence the opinion of the other two. The rule mentioned by me in the beginning of my judgment has in no way been offended. Section 350-A which has been added by the Amending Act 18 of 1923, also lends support to the view which I have taken. My opinion is also fortified by the following cases: Karupanna Nadan v. Chairman, Madura Municipality (1898) 21 Mad 246, Venkatarama Aiyar v. Saminatha Aiyar A.I.R. 1914 Mad 139 and Khuda Baksh v.

Emperor (1917) 18 Cr. L.J. 749. There is no force in this revision and I dismiss it.

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