

Sher Mohammad Khan Vs. Bihari and ors.

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Court : Allahabad

Decided On : Apr-21-1927

Reported in : AIR1927All755

Appellant : Sher Mohammad Khan

Respondent : Bihari and ors.

Judgement :

Lindsay, J.

1. I think this application in revision must be allowed. It appears that a number of persons were convicted in the Court of a First Class Magistrate of Aligarh and sentenced to various terms of imprisonment. In appeal to the Sessions Judge a legal point was taken, namely, that the conviction was contrary to law because the Magistrate did not observe the provisions of Section 360, Criminal P.C. The learned Judge accepted this argument and set aside the conviction and sentence and sent the case back for re-trial. In passing this order the Judge remarked that if the question raised were res integra he should have been disposed to hold that the omission to comply with the terms of Section 360, Criminal P.C., was a mere irregularity which could be cured by the provisions of Section 537. He felt himself bound, however, by the decision in Hiralal Ghose v. Emperor : AIR1924 Cal889 and certain other authorities and so he held that the trial in the first Court was invalid. Since the learned Judge passed this order there has been reported a case

decided by their Lordships of the Privy Council *Abdul Rahman v. King-Emperor* . Their Lordships have laid down that non-compliance with the strict provisions of Section 360, Criminal P. C, only amounts to an irregularity and is cured by Section 537 of the Code. The case relied on by the learned Sessions Judge, namely *Hira Lal Ghose v. Emperor* : AIR1924 Cal889 , was overruled by their Lordships.

2. There is only one other point which may be mentioned and which has been brought to my notice by the learned Assistant Government Advocate. He refers to the explanation to Section 537 and points out that any objection to error, omission or irregularity ought to be taken at the first possible opportunity. No such objection seems to have been raised in this case.

3. At any rate, it is clear now on all hands from this decision of their Lordships of the Privy Council that the trial was not invalid and that there was a mere irregularity which was cured by Section 537, Criminal P.C. I, therefore, set aside the order of the Sessions Judge and direct that the records be returned and that the learned Judge be directed to hear the appeals of these convicted persons and decide them on the merits.