

Bajai Vs. Ram Sarup and ors.

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Court : Allahabad

Decided On : Apr-26-1927

Reported in : AIR1927All757

Appellant : Bajai

Respondent : Ram Sarup and ors.

Judgement :

ORDER

Lindsay, J.

1. This is an application for the revision of an order passed by the District Magistrate directing that the opposite party should be retried for an offence of which they had been convicted. The learned District Magistrate passed his order upon an application for revision made by the opposite party. The ground for revision was that the depositions had not been read over to the witnesses as required by the provisions of the Criminal Procedure Code. The learned District Magistrate relied upon the fact that I had passed similar orders on the same ground. My orders were based on the rulings reported as Hira Lal Ghosh v. Emperor Dargahi v. Emperor . I felt that I was bound in law to follow these rulings, because they appeared in the Indian Law Reports and were not contradicted by any rulings of the High Court at Allahabad. If there had been no authority I should have held that an irregularity of procedure such as this could be cured by the

provisions of Section 537, Criminal P.C. The Code makes no distinction between illegalities and irregularities. It regards all mistakes in procedure as irregularities and divides them into irregularities which vitiate proceedings and irregularities which do not vitiate proceedings.

2. If a Magistrate who acts absolutely without jurisdiction does not commit an irregularity, I do not suppose that any mistake in procedure can be regarded as being so serious that it is not an irregularity but an illegality. The matter has now been set at rest by the decision of their Lordships of the Privy Council in *Abdul Rahman v. Emperor* . In the present case it was never urged that the omission to read over the evidence to the witnesses did in fact occasion a failure of justice. I, therefore, report the case to the Hon'ble High Court with the recommendation that the order of the District Magistrate should be set aside and that the convictions and sentences should be restored. I have ascertained that the retrial has not proceeded pending the decision of this Court on the application for revision.

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