

Mithan Lal Vs. Emperor

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Court : Allahabad

Decided On : Dec-22-1909

Reported in : 5Ind.Cas.17

Judge : Tudball, J.

Appellant : Mithan Lal

Respondent : Emperor

Judgement :

Tudball, J.

1. The circumstances of the case out of which this application has arisen are set forth at length in the order of this Court passed on Revision No. 530 of 1909. Subsequently to that order the District Magistrate issued notice to Mithan Lal to show cause why he should not be prosecuted for an offence under Section 175, Indian Penal Code, and after hearing him has ordered his prosecution. It is against this latter order that the present application has been made in revision. Two points are taken:

(1) That the order has been passed without jurisdiction and

(2) that even if passed with jurisdiction, the circumstances of the case are such that no order for prosecution should have been passed.

2. On the first point attention is called to a ruling of this Court. In the matter of the petition of Nihal Chand A.W.N. (1895) 225, where it was held that a Court entertaining an application under Section 195 of the Criminal Procedure Code for revocation of a sanction granted for the prosecution of the applicant has no power to change the order against which such application is made into an order under Section 476 of the said Code. It is pointed out that the proceedings against the present applicant began in an application to a Bench of Honorary Magistrates for sanction to prosecute. The sanction was refused, whereupon the case was taken in revision to the District Magistrate. The order, passed by the latter was set aside by this Court on technical grounds. The District Magistrate has now taken proceedings under Section 476, which proceedings, I take it, are deemed by him, to be entirely fresh proceedings having no connection with the application for sanction originally made. I fully agree with what Mr. Justice Knox has said in the decision mentioned above. The matter came before the District Magistrate on revision under Section 195. His order was set aside by this Court merely on the ground that he had not issued notice to Mithan Lal before deciding the matter. After this Court's order it was open to him to issue notice to Mithan Lal and to take up the revision again. He has not done so. On the contrary he has instituted entirely fresh proceedings under Section 476 which, in my opinion, he had no power to do at that very late stage of the case. Except under very special circumstances, proceedings under Section 476, Criminal Procedure Code, should be taken at an early date after the decision of the original case and certainly not in the manner in which, action has been taken in the present case. Over and above this, the matter is one which in my opinion, ought to be dropped. Mithan Lal, it is true, did not produce the books when called upon by the Bench of Honorary Magistrates to do so. When examined as a witness, he was merely asked whether he had produced the books. He replied in the negative. The Bench of Magistrates obviously did not think that production of those books was at all necessary for the decision of the case. When asked by the accused to enforce the production thereof, the Bench refused to do so. Even though Mithan Lal was called upon to produce the books and failed so to do, still when the Court itself did not think production at all necessary for the decision of the case, it would, in my opinion, be quite improper to carry the matter any further and to prosecute Mithan Lal for

intentionally disobeying the Court's order, In this view I set aside the order of the District Magistrate and quash the proceedings.

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