

Muhammad Rahim Vs. Emperor

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Court : Allahabad

Decided On : Jul-07-1925

Reported in : AIR1926All144

Appellant : Muhammad Rahim

Respondent : Emperor

Judgement :

Banerji, J.

1. This is an application in revision by one Muhammad Rahim, who was convicted under Section 323, I.P.C. and fined Rs. 50. He was ordered to execute a personal bond of Rs. 100 with two sureties of Rs. 50 each under Section 106, Criminal P.C. He has come up in revision and various grounds were taken by the learned vakil for the applicant. But the only ground in which there is force is ground No. 3, which is with reference to the order binding over the petitioner to keep the peace.

2. It appears that the parties owned some fisheries and there was some dispute between the complainant and the accused about catching fish. There appears to have been a wordy warfare between the two and the accused caused simple hurt to the complainant. The learned Magistrate tried the case summarily; he found for the complainant on the question of the assault, and finding the accused guilty under Section 323 sentenced him to pay a fine of Rs. 50. He further found that the parties were on bad terms. He, therefore, passed an order about furnishing

securities. Under Section 106, Criminal P.C., an order binding over an accused person can only be passed when in a case of causing simple hurt or assault a breach of the peace is involved. No hard and fast rules can be laid down; but in the absence of a finding that the assault, which took place, involved breach of the peace or public tranquillity, the Magistrate cannot merely on the ground that the parties were on bad terms bind the accused down. No one goes to assault his personal friends so that the mere fact of the assault necessarily involves the finding directly or indirectly that the parties are on bad terms. My attention has been drawn by the Assistant Government Advocate to the case of Ramaswami Thewan v. Emperor AIR 1923 Mad 618. That case is clearly distinguishable and under similar circumstances I would have been quite prepared to maintain the order binding over the accused; but upon the mere finding that the accused and the complainant were not on good terms it is impossible to maintain the order passed, which does not come within the purview of Section 106, Criminal P.C. I set aside the order of the Magistrate directing the petitioner to execute a personal bond of Rs. 100 with two sureties of Rs. 50 each. The application is otherwise dismissed.

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