

Emperor Vs. Malkhan Singh

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Court : Allahabad

Decided On : Aug-25-1936

Reported in : AIR1936All762; 165Ind.Cas.698

Appellant : Emperor

Respondent : Malkhan Singh

Judgement :

ORDER

Bennet, J.

1. This is a reference by the learned Sessions Judge of Aligarh recommending that an order under Section 482, Criminal P.C., by a Magistrate for the prosecution of one Thakur Malkhan Singh, Advocate, under Section 228, I.P.C., should be set aside but that the trial of this person under Section 189, I.P.C., should proceed. The facts are that a Magistrate who had been sitting as a returning officer passed an order on 12th December 1935 to the effect that he was disposing of certain revenue cases and he was interrupted by Thakur Malkhan Singh, intentionally and also threatened by him. The position taken by the learned Additional Sessions Judge is that the interruption was on the previous day, the 11th December, and that the order should have been passed on that day and not on the 12th December. The argument of learned Counsel which has been accepted by the Court below is that an order under Section 482, Criminal P.C., must be passed on

the day on which the offence occurs, This argument is based on the fact that an order under Section 480 Criminal P.C., must be passed on the day on which the offence occurs. In Section 480(1), Criminal P.C., it is stated that when any offence under Sections 175, 178, 179, 183 or 228, I.P.C., is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees, etc. Now this section provides for summary punishment by a Court although that Court need not be a criminal Court but may be a civil or revenue Court.

2. In conferring this peculiar jurisdiction on Courts which are not criminal Courts the legislature introduced the limitation that the jurisdiction must be exercised before the rising of the Court on the day on which the offence is committed. As the jurisdiction was a peculiar one it was not unnatural that the legislature should introduce this limitation of time. If the limitation did not exist it would be difficult for a civil or revenue Court to take proceedings on a subsequent date when the offender would presumably not be before the Court. But there is no such limitation in Section 482, Criminal P.C. In that case the Court is not required to take proceedings before the rising of the Court, and in fact the only proceeding that the Court takes is after recording the facts constituting the offence and the statement of the accused to forward the case to a Magistrate, and the subsequent steps are taken by a Magistrate. Under Section 482, the Court does not dispose of the offence, but it merely makes a complaint. Learned Counsel has altogether failed to satisfy me as to why the legislature should desire to limit the right of a Court to make a complaint by the extraordinary provision which he suggests that unlike a private complainant a Court should only be allowed to complain on the day on which the offence takes place. I can think of no reason whatever why such an extraordinary limitation should be suggested. There is nothing whatever in the language of the Criminal Procedure Code to support this strange idea. Learned Counsel has no authority whatever in support of his proposition. On the contrary the only authority to which he made a reference, *Bipin Chandra Pal v. Emperor* (1908) 35 Cal 161, lays down the contrary. The same argument was advanced to a Bench of the Calcutta High Court and it was held by Rampini, J. on p. 165, as

follows:

The Chief Presidency Magistrate proceeded under Section 482, Criminal P.C. There is no provision in this section, as there is in Section 480, that he should take proceedings the same day as that on which the offence is committed.

3. Learned Counsel referred to p. 169 of the ruling in which Sharafuddin, J. stated:

Assuming that Section 482, Criminal P.C., required the proceeding to be drawn up on the day the offences were committed, this objection is of no avail to the petitioner inasmuch as the proceeding of the 25th August related also as to what had happened on that date.

4. This learned Judge merely treated the argument as an assumption and he did not state that he adopted the argument as at all correct. The ruling therefore is against the learned Counsel. The Court below has not referred to any ruling in support of its peculiar view of the law. It appears to me to be particularly objectionable to interfere in the course of a trial before a Magistrate, and in the present case the view of law that has been put forward for the reference is one which is radically unsound. Accordingly I reject this reference.

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