

Emperor Vs. Bhagwani

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Court : Allahabad

Decided On : Mar-16-1918

Reported in : AIR1918All228(2); 45Ind.Cas.146

Judge : Piggott, J.

Appellant : Emperor

Respondent : Bhagwani

Judgement :

Piggott, J.

1. The learned Sessions Judge has been Quite right to refer this case. The proceedings in the Magistrate's Court have been distinctly irregular. Two persons were sent up for trial, Achuta and Musammat Bhagwani, in connection with an alleged offence of kidnapping under Section 363 of the Indian Penal Code. The Magistrate framed the charge under that section, convicted both accused and sentenced them to rigorous imprisonment for eighteen months. Achuta appealed against his conviction, but Musammat Bhagwani did not. The learned Sessions Judge had jurisdiction to deal with the case of Achuta under Section 423 of the Code of Criminal Procedure and he accordingly set aside the conviction and sentence and ordered Achuta to be committed for trial on a properly framed charge under Section 366 of the Indian Penal Code; he being of opinion that the offence disclosed by the evidence, if committed, fell under that section and was

exclusively triable by the Court of Session. The case of Musammat Bhagwani, who had not appealed, could only be referred to this Court for the exercise of its revisional jurisdiction. In the meantime, while the reference of the learned Sessions Judge was pending before this Court, the Magistrate has proceeded to pass an order of commitment against both Achuta and Musammat Bhagwani which he had not jurisdiction to do while the conviction and sentence against that accused person on her trial under Section 363 of the Indian Penal Code remained standing. Taking up the matter now in revision I set aside the conviction and sentence against Musammat Bhagwani under Section 363 of the Indian Penal Code; I also set aside as irregular the commitment order which has been passed against this accused but I direct that, she be committed to the Sessions Court for trial so that she may be tried along with the other accused Achuta on a properly framed charge under Section 366 or 366/109 of the Indian Penal Code.

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