

Yad Ram and anr. Vs. Risal

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Court : Allahabad

Decided On : Nov-11-1909

Reported in : 5Ind.Cas.469

Judge : Richards, J.

Appellant : Yad Ram and anr.

Respondent : Risal

Judgement :

Richards, J.

1. This and the connected Appeals Nos. 624, 625, 626, 709 and 710 arise out of an application made to Mr. Johnston, Additional Sessions Judge, for sanction to prosecute under Section 1915 and Section 211, Indian Penal Code. The learned Additional Sessions Judge granted leave to prosecute Yad Ram and Chote under Section 193, but he refused sanction to prosecute under Section 211. It appears that a dacoity was really committed about the 6th of July, 1908, and Ram Chander and Yad Ram were the victims. The dacoity was reported early on the morning of the 6th of July. No names were mentioned in the report; but on the 13th of July a petition was sent to the Magistrate which complained that the police were taking no steps through the influence of one Radha Kishen. Radha Kishen appears to be a more or less influential zamindar in the neighbourhood. The complainants are banias. The dacoity case was tried by Mr. Lyle on the 7th of December 1908. He

does not appear to have thought it necessary even to complete the recording of the evidence, he came to the conclusion that the persons charged could not possibly be convicted and he considered the evidence given in support of the complainants' case altogether unreliable. The accused were, of course, acquitted, and on the 1st or 2nd of April, 1909, the present application for sanction to prosecute was made. In the meantime Mr. Lyle had ceased to act as a Sessions Judge and his place had been taken by Mr. Johnston. Mr. Johnston takes certain statements made by Yad Ram and Chote before the Magistrate on the 23rd of July, 1908, and contrasts them, with the statements made in the following December. He points out that they are irreconcilable and he accordingly granted sanction for the prosecution of these two persons. It has been pointed out more than once that a prosecution of this nature should be instituted as soon as possible. A delay of four months has taken place in the present case and the only explanation is the statement that one of the several applicants for sanction was in prison on some other charge. This statement of the counsel does not appear to have been supported by any evidence and the excuse, if excuse it be, only applies to one of the applicants. Had the sanction, however, in the present case been given by Mr. Lyle. I should have been very slow to interfere with his order. I cannot quite lose sight of the fact that Mr. Lyle might have ordered a prosecution at once if he had thought fit to do so. I am not quite satisfied that the statements made on the 23rd July, and 7th of December, were intentionally false. It is not argued and could not be argued that Mr. Johnston had no jurisdiction to grant the sanction. I think, however, that it is very much more satisfactory that the sanction should be given by the very Judge in whose Court the alleged offence, whether it be under Section 198 or Section 211, actually took place. As a matter of fact at the trial the attention of neither Yad Ram nor that of Chote was called to the alleged contradictions which, they had made in their evidence on the two occasions. The learned Judge was of opinion that there was not sufficient material in the case to warrant a prosecution under Section 211. Mr. Howard on behalf of the opposite party has filed an appeal against the refusal to grant sanction to prosecute for this offence. It occurs to me that if sanction were granted at all, it would have been much more satisfactory that sanction should have been granted under Section 211. On the whole, however, bearing in mind the delay which has taken place and

the change in the Judges, I think it is undesirable that a prosecution should take place. I accordingly set aside the order of the learned Additional Sessions Judge granting sanction to prosecute Yad Ram and Chote and I dismiss the appeal in the case of the refusal to grant sanction under Section 211.

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