

ishwar Prasad Vs. Emperor

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Court : Allahabad

Decided On : Mar-08-1918

Reported in : AIR1918All133; 45Ind.Cas.149

Judge : Tudball, J.

Appellant : ishwar Prasad

Respondent : Emperor

Judgement :

Tudball, J.

1. In this cage Ishwar Prasad has been convicted of an offence under Section 411 of the Indian Penal Code and has been sentenced to a fine of Rs. 100 by a Magistrate of the second Class. He appealed against his conviction to the District Magistrate who has directed the case to be re-tried in another Court in accordance with law. It is within the Magistrate's power to direct a re-trial under Section 423, Clause (b) of the Criminal Procedure Code. The grounds given by the District Magistrate for ordering a re-trial are as follows: He says that from its appearance the case would seem to have been hurriedly tried and one in which the evidence is deficient. In particular it is not clear why the evidence of the ekkawala who was present at the search, was not taken as he is one of the main witnesses whose evidence is intended by law to be of importance in a case of this type. The procedure adopted is open to criticism. It is necessary that the case should be

retried' If the only defeat in the procedure of the Court of first instance is that certain evidence has not been brought upon the record which ought to have been there, than it seems to me it is quite unnecessary to do any more than to have that evidence brought upon the record. It would be unnecessary to worry all the witnesses a second time and to waste public time in having them re-examined. It is not clear except for the above in what way the procedure of the first Court is open to criticism. There is no explanation by the District Magistrate in the matter. I, therefore, direct that the record be sent to him in order that he may point out in what way the procedure is open to criticism other than the fact that certain evidence has not been recorded.

2. [On receipt of the report of the District Magistrate his Lordship passed the following:]

3. Order--I have read the report of the District Magistrate. I do not think it is quite fair to the accused in the present case to direct his re-trial. There is only one witness left for examination and a few questions to be put to the Police Officer who conducted the case. I, therefore, allow the application to this extent that I set aside the order of the District Magistrate directing a re-trial. I direct the District Magistrate to summon the witnesses named by him in his report to examine them and after so doing, to decide the question of the applicant's innocence or guilt.