

Chander Shekhar Vs. Emperor

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Court : Allahabad

Decided On : Nov-26-1919

Reported in : AIR1919All19; 54Ind.Cas.411

Judge : Ryves, J.

Appellant : Chander Shekhar

Respondent : Emperor

Judgement :

Ryves, J.

1. On the 13th June 1919 Mathra, the complainant, made a report at the Police station in which he charged three persons with simple assault. On the 16th June he filed a complaint in Court, in which he stated that the three persons whom he had already named at the Police station together with the applicant in the present case and a large number of their servants had attacked the complainant, had forcibly taken away his ox and begun to beat him and when the complainant's aunt came to rescue him, they beat her and stole her ornaments and decamped with the ox and the ornaments.

2. The charge which was originally against three persons only of simple assault had grown into a full fledged dacoity against a large number. When the matter came up for enquiry before the learned Magistrate, he proceeded to examine the

complainant Mathra and then recorded the following order: 'In the first report complainant named only a very few persons and as the Police had not challenged, it was for them to adduce evidence. I have examined Mathra complainant and I have noticed his aversion to state facts against accused. The parties have colluded and it would be futile to proceed with the trial. Under the circumstances, the prosecution will fail to give evidence in support of their version and I would, therefore, only bind down the selected accused under Section 107 of the Criminal Procedure Code. The accused summoned will be discharged under Section 253 of the Criminal Procedure Code.'

3. He there and then issued notice to three of the accused, who are Zamindars, calling on them to show cause why they should not furnish security to keep the peace for one year. On being asked what each of them had to say as to the notice served on them they replied that they were prepared to furnish the securities as demanded. One of these persons, namely, Chandra Shekhar, has moved this Court in revision against that order. I admitted the application and sent for the record. It seems to me that the order of the Magistrate was wholly illegal. There was no enquiry as to whether these persons were likely to commit a breach of the peace or were otherwise proper subjects for proceedings under Section 107 of the Code of Criminal Procedure. I do not think the fact that the applicant and his co-accused were prepared to give the securities demanded in any way prevents them from moving this Court. Following the cases reported as Bam Chandra Haldar v. Emperor 35 C. 674 : 8 C.L.J. 68 8 Cr. L.J. 128 and Mul Chand v. Emperor 26 Ind. Cas. 653 : 12 A.L.J. 1262 : 37 A. 30 : 16 Cr. L.J. 61 Cr. L.J. 61. I set aside the orders under Section 107 of the Code of Criminal Procedure. If the securities have been given they must be cancelled.