

Daya Ram Vs. Emperor

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Court : Allahabad

Decided On : Aug-16-1934

Reported in : AIR1934All988a; 153Ind.Cas.133

Judge : Sulaiman, C.J. and; Rachhpal Singh, J.

Appellant : Daya Ram

Respondent : Emperor

Judgement :

Rachhpal Singh, J.

1. This is a revision by the appellant against his conviction under Section 193, Penal Code. The facts of the case are very simple. One Panna Lal was the headman of a village. The police reported to a Magistrate against Panna Lal whereupon the Magistrate held an enquiry during the course of which Daya Ram, a witness, was examined. He deposed in his statement that he had filed a complaint against Panna Lal under Section 500, Penal Code, and that on that complaint Panna Lal had been fined. It was found that this statement was false. Both the Courts below have held that Daya Ram has been guilty of an offence under Section 193, Penal Code. The only question for determination in this case is whether the conviction of the applicant under Section 193, Penal Code, can be sustained. That will depend on a decision of a further question whether the Magistrate who examined him had power to administer oath to him. Section 45,

Criminal P.C., empowers Magistrates to make appointments of headmen. It may be assumed that a Magistrate may dismiss the headman when he is satisfied that he is not a fit person. But the principal question is whether he had power to administer oath to the accused when he was examined as a witness before him. In our opinion he had no such powers. The orders of a Magistrate in respect of such matters are executive orders as held in a ruling of this Court in *In the matter of Damma* (1907) 29 All. 563. We are therefore clearly of opinion that the conviction of the accused is bad and must be set aside. We accordingly allow the revision, set aside the conviction and sentence and direct that the accused be acquitted.

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