

Naubat and ors. Vs. Emperor

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Court : Allahabad

Decided On : Oct-23-1926

Reported in : AIR1927All136

Appellant : Naubat and ors.

Respondent : Emperor

Judgement :

Ashworth, J.

1. This is a reference by the Sessions Judge of Ghazipur recommending that an order passed by a First Class Magistrate for the summary trial of 31 accused should be set aside. A complaint was lodged against 31 accused alleging facts, which if believed, would indicate that offences under Sections 147 and 427, Indian Penal Code, had been committed by them. This complaint Was filed before one Magistrate. The Magistrate took cognizance of the offences alleged under Section 190(a) of the Criminal P.C. that is to say, he took cognizance on a complaint. He then, under Section 202, directed an investigation by the police. The police expressed the opinion that the facts justified the accused being put on their trial under Sections 143 and 427 of the Indian Penal Code, and that it was a case where the summary method of trial might be employed. The Magistrate appears to have accepted the police report and the case was transferred by the District Magistrate for a summary trial to another Magistrate. The accused thereupon

made an application that the case could not be tried summarily which was rejected by the second Magistrate by order dated 26th August 1926. In this order the Magistrate has stated that

no doubt there is a large number of accused, but the sections are such that they can be tried summarily. In case I convict the accused and also bind them over under Section 106 the order becomes appealable.

2. Then there is a reference to Section 107 which is not understood. The Sessions Judge is of opinion that the rejection of the application of the accused against the trial being heard summarily was improper on the grounds (a) that the complaint, if true, would indicate offences under Sections 147 and 427; (b) that there were a large number of accused; (c) that there would be no appeal in case a non appealable sentence was passed.

3. It may be added that in the application of the accused against the trial being heard summarily, it is stated that no order under Section 106 could be passed upon conviction of an offence under Section 143 or Section 427 which appears to be correct. No sufficient ground appears to me for interference in revision. A Magistrate is entitled after taking cognizance of a complaint to order a police investigation and to take that investigation into consideration when considering under what sections the accused should be put on their trial, otherwise there would appear to be no reason for the Legislature allowing the Court to order investigation by the police under Section 202.

4. As to the facts of there being a large number of accused persons, Section 260 of the Criminal P.C., gives a discretion to a Magistrate to try summarily certain offences if he thinks fit. The mere fact of there being a large number of accused does not appear to me to be a conclusive reason against trying a case in the summary method.

5. As to the remark of the Sessions Judge that there would be no appeal if the accused were convicted, the law appears to desire that in certain cases there should be no appeal, and no sufficient reason appears why in this case an opportunity for appeal is essential. The remark of the Assistant Magistrate that an

appeal would lie if he bound the accused under Section 106 may be ignored as he could not so bind them. But if there is no order under Section 106 the accused have no reason to complain. The Sessions Judge has mentioned certain rulings which appear to amount to this: that in considering the section of the Indian Penal Code under which accused persons should be tried, the Court should take into account the facts alleged in the complaint on the basis of which cognizance of the case is taken. This does not mean that a Court is bound to put a person on his trial under a section which the Court does not believe applicable to those facts which there is a reasonable chance of being proved.

6. The Magistrate appears to have been influenced by the police report in directing a summary trial and I find nothing improper in this. He does not appear to have been prompted by any improper desire to prevent an appeal. For the above reasons I see no reason for interference and order that the record be returned.

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