

Keshab Deo Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/473652

Court : Allahabad

Decided On : Feb-02-1923

Reported in : AIR1924All320; 81Ind.Cas.715

Judge : Lindsay, J.

Appellant : Keshab Deo

Respondent : Emperor

Judgement :

Lindsay, J.

1. The Additional Sessions Judge having jurisdiction over the Etah District has reported this case recommending that the trial under Section 110 of the Code of Criminal Procedure be set aside and that a fresh trial be ordered in some other district either Budaun or Aligarh.

2. In his order dated the 16th January, 1923, the learned Sessions Judge refers to certain irregularities which wrere committed at the trial in the Court of the Deputy Magistrate.

3. It is not necessary for me to refer to all that is set out in the referring order of the Judge nor perhaps would I be able to subscribe to all the criticism which the learned Additional Sessions Judge has passed upon the procedure in the Deputy

Magistrate's Court. However, there is this much to be said that the learned Additional Sessions Judge has laid stress upon an irregular order which was passed by the Deputy Magistrate on the 14th November, 1922. The Deputy Magistrate has been asked for an explanation and his explanation is before me. He tried to defend his order of the 14th November, 1922, by stating that it merely amounted to a warning to the accused person that he would be called upon to enter upon his defence on the 29th November after the remaining prosecution witnesses had been examined. I have examined the order which was passed by the Deputy Magistrate on the 14th November, 1922. That order which is repeated in the fard ahkam distinctly states that the accused was informed that he must be ready with his witnesses for the defence on the 29th November. I agree with the learned Additional Sessions Judge in holding that this was an improper order.

4. I do not propose to discuss the other irregularities which are set out in the order of the Additional Sessions Judge beyond saying that I am not prepared to hold that it was not open to the Deputy Magistrate to demand enhanced bail during the course of the trial if there were circumstances which in the opinion of the Deputy Magistrate called for that course to be taken.

5. I have decided, however, that in the interests of the accused it is proper that a fresh trial should be had and, accepting the recommendation of the Additional Sessions Judge, I direct that the former trial be set aside and that the accused be tried de novo in the Aligarh District in such competent Court as the District Magistrate of Aligarh may appoint for that purpose.