

Zahir Singh Vs. Emperor

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Court : Allahabad

Decided On : Feb-19-1915

Reported in : AIR1915All110; 28Ind.Cas.646

Judge : Tudball, J.

Appellant : Zahir Singh

Respondent : Emperor

Judgement :

Tudball, J.

1. This application in revision arises out of the following facts. One Tika Ram obtained a sanction on March 3rd, 1918, to prosecute Zahir Singh and certain others for offences under Sections 467 and 471 of the Indian Penal Code. An appeal was filed against the order granting sanction, which was dismissed on June 10th, 1913. On July 5th, 1913, Tika Ram filed a complaint against those three persons. Proceedings in the case were suspended pending the decision in an application in revision to this Court. That application was rejected on January 21st, 1914. Tika Ram then waited practically for four months until May 15th, 1914, when he went into Court and asked that his complaint might be taken up and decided. His application was granted and the case came up for hearing at the end of a little over three months on August 20th, 1914. Tika Ram did not appear and the accused were discharged. After the order of discharge had been made, Tika Ram

filed a fresh complaint as against Zahir Singh only. Zahir Singh on this fresh complaint at once took objection that it was a complaint filed out of time and that the Magistrate could not take cognizance of the offence. The Magistrate disallowed this objection in the following words: 'The first application was within time and by the subsequent application the continuity is not broken.' In other words, he took this fresh complaint as being a proceeding in continuation of the former proceeding. This, however, was clearly wrong. It was clearly a fresh complaint as against Zahir Singh alone. If Tika Ram wished to continue the former proceeding he could have gone to the District Magistrate or the Sessions Judge and have obtained an order for further enquiry, on his first complaint. Zahir Singh has been committed for trial. The present application is directed to have that committal order quashed. On behalf of the Crown it is urged that the defect in the section is one which is cured by Section 537 of the Code of Criminal Procedure. That section lays down that subject to the provisions hereinbefore contained no order shall be reversed or altered in revision on account of want of any sanction required by Section 195, unless such want has in fact occasioned a failure of justice. The explanation attached to the section is that in determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether an objection could and should have been raised at an earlier stage of the proceeding. As has frequently been remarked in many cases, Section 537 is not perhaps happily worded. But to my mind one thing is clear, and that is that Section 537 was clearly never intended to allow a Magistrate to override the clear provisions of the Code. The section was intended to prevent a mere technicality from interfering with the course of justice, the error, omission, etc., being one which had escaped all parties at the beginning of the proceeding. Where, however, as in the present case, the want of sanction was at once brought to the attention of the Court, it was clearly the duty of the Magistrate to refuse to take cognizance of the complaint on the ground that he could not do so by reason of the terms of Section 195 of the Code. To allow the present applicant to proceed to trial in the Court of Session would be grossly unfair, seeing that the trial must in the end fail by reason of the want of sanction. I, therefore, allow the application and set aside the order of the Court below. The applicant, if on bail, need not surrender; if in confinement, he will be

released at once.

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