

**Deep Chand and ors. Vs. Emperor**

**Deep Chand and ors. Vs. Emperor**

**SooperKanoon Citation :** [sooperkanoon.com/475645](http://sooperkanoon.com/475645)

**Court :** Allahabad

**Decided On :** Feb-06-1935

**Reported in :** AIR1935All627; 157Ind.Cas.915

**Appellant :** Deep Chand and ors.

**Respondent :** Emperor

**Judgement :**

ORDER

**Kendall, J.**

1. These two references have been made by the learned Sessions Judge of Saharanpur, for the purpose of having the conviction of five persons set aside, and a retrial ordered, on the ground that the order of the Magistrate is not maintainable because of certain illegalities. The facts are briefly given in the order of reference.

2. It is said in the first place that two of the accused persons, Dip Chand and Hulas Chand, were not given an opportunity to cross-examine the prosecution witnesses, and that the Court did not therefore observe the provisions of Section 256, Criminal P.C. The record shows that the accused were charged on 7th July 1934, that the prosecution witnesses were recalled for cross-examination including the complainant and that the complainant was examined and cross-examined on the 13th and 14th and the rest of the prosecution witnesses on the 20th July. The accused were represented by several different lawyers, and the explanation of the

Magistrate shows that one of these lawyers led the cross-examination and the others, helped him in suggesting questions to be asked. The judge however has found that as these two accused persons filed an affidavit to show that they did not get an opportunity to cross-examine several of the prosecution witnesses, the explanation must be that

inadvertently these accused were not asked to cross-examine the prosecution witnesses and neither any cross-examination on their behalf was done nor their statement that they did not want to cross-examine the prosecution witnesses was recorded.

3. The occasion when the Court is obliged to ask the accused whether he wishes to cross-examine any and if so, which of the witnesses for the prosecution, is after the charge has been drawn, and there is no doubt that in the present case the accused were asked and the witnesses were summoned to appear in Court for the purpose of cross-examination. It is also clear that they were cross-examined during several days at considerable length. The two accused, Dip Chand and Hulas Chand, were no doubt present, during the whole of these proceedings and so was their lawyer. If no questions were asked on their behalf the only conclusion that can reasonably be drawn from the circumstances which I have described above is that they did not want to ask those questions. There is certainly nothing to show that they requested the Court to be allowed to ask questions and that the Court refused to allow them to do so. They must have been present when the questions which were asked by the other counsel had been answered and the cross-examination had been finished; and if they still wished to ask further questions, I have no reason whatever to suppose that the Court would have prevented them from doing so. It has been suggested that the Magistrate had no right to discharge the witnesses until he had definitely asked each of the accused and each of the counsel for the accused whether they had any further questions to ask. It is possible that the Magistrate did not specifically ask the question in this way, and though it is usual for the Court to do so, I cannot find that at this stage the Court is under any obligation to do so. It has been pointed out that on the 23rd July, an application was made on behalf of these two accused saying that they had not had an opportunity to cross-examine several of the prosecution witnesses.

If this was intended to be an application under Section 257 Criminal P.C. for compelling the attendance of these witnesses again, the Court was, not bound to compel the attendance of the witnesses unless satisfied that it was necessary for the purposes of justice, and as the Magistrate knew that the witnesses had been most thoroughly cross-examined on behalf of the accused and that these particular two accused had had an opportunity of asking any questions that they wished to put on their behalf, he was evidently satisfied that it was unnecessary to trouble the witnesses again.

4. The matter was a very petty one, and the accused were all apparently acting in the same interests, namely the interests of the temple on which the complainant is supposed to have trespassed. The second objection that has been taken to the Magistrate's proceedings is that the charge sheet has not been properly drawn up, in that it does not mention that the accused formed an unlawful assembly. This is true. The charge sheet simply charges the accused with rioting and voluntarily causing simple hurt without explaining what rioting means. The irregularity in the charge sheet however is certainly cured in the present case by the provisions of Section 535 or 537 of the Code. There was no prejudice to the accused, all of whom were represented by counsel, and if these half dozen counsel did not know themselves what rioting meant, it was at any rate easy to them to find out by examining the provisions of the Penal Code. The more serious objection is that the Court has not come to a definite finding that the accused formed an unlawful assembly. An examination of the judgment of the Magistrate however shows that there was no real doubt on this point although he has not stated in so many words that there was an unlawful assembly and that violence was used by it. It would make no difference to the sentence if the conviction under Section 147 were to be quashed. But in the circumstances, I do not think that it is necessary to do so on the ground that the accused have been prejudiced in anyway by the failure of the Magistrate to express himself clearly.

5. Finally, it is said, that the order under Section 106 is irregular because such an order can only be justified if the Court finds that a breach of peace is apprehended in future. The Magistrate has explained however that it was necessary to protect the complainant B. Indra Prasad against similar incidents, and if the Court believed

this, there was no reason why the order should not have been passed. B. Indra Prasad had been assaulted by the trustees of this temple and had been beaten by them, and he had persuaded the Court that he went in fear of his life. This being so, the order of the Magistrate appears to have been not only regular, but justified. The result is that I find that there is no force in these two references and they are therefore rejected. The papers may be returned and the Magistrate's order may stand.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**