

Tek Chand Vs. Emperor

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Court : Allahabad

Decided On : Apr-02-1935

Reported in : AIR1935All638; 157Ind.Cas.413

Appellant : Tek Chand

Respondent : Emperor

Judgement :

ORDER

Kendall, J.

1. The applicant, Tek Chand, was ordered by a First Class Magistrate to provide a personal bond, and sureties under Section 118, Criminal P.C. because he was found to be a desperate and. dangerous character within the meaning of Clause (f), Section 110, Criminal P.C. The learned Sessions Judge maintained the order in appeal. I am asked to interfere for more than one reason.

2. The first point taken is that, as the learned Judge has remarked, the proceedings against the applicant were an off-shoot of what was called the Agra Conspiracy Case in which one Bachcha Babu and several others were prosecuted under the Arms Act for conspiracy and for other offences. In that case the accused were convicted in the Sessions Court on 19th February 1934, but all of them except Bachcha Babu were acquitted by the High Court on appeal on 26th November 1934. The Sessions Judge passed orders in the present case on 24th

July 1934, i.e., before the appellate decision of the High Court. It has therefore been pointed out that it has, been found by the High Court-that the alleged conspiracy has not been proved to exist, and that one or two of the events on account of which proceedings have been taken against the present applicants did not take place. All this is true and has a certain force, but the evidence on which the Magistrate and the Judge mainly relied in the present proceedings was of a special character. It was found that the applicant, who was not one of those accused in the conspiracy case, had been present in the precincts of the Court and had threatened one of the assessors in unmistakable terms. He was proved to have warned Sirdar Singh that if he did not give his opinion in favour of the accused he would be killed by a pistol or a bomb, and to have made use of other threatening expressions, and he was proved by the evidence of Sirdar Singh and another witness, Chhanga Mal, to have sent a threatening message, through Chhanga Mal to Sirdar Singh worded in a similar way. In my opinion, the Courts were perfectly justified in holding that a man who was proved to have acted in this way was a desperate and dangerous character who had unmistakably laid himself open to proceedings under Section 110, Criminal P.C. I have not gone; into the other evidence brought against the applicant, though I am told there is plenty of it, because this part of the case for the applicant does not appear to me to be well founded.

3. There is however one serious irregularity in the proceedings. The applicant summoned 32 witnesses for the defence and after hearing 21 of them, the Magistrate (refused to hear any more. There is no provision in the Criminal Procedure Code by which a Magistrate can arbitrarily limit the number of witnesses for the defence. Section 257, which is one of the provisions relating to warrant cases, the procedure which governs the present case lays down that a Magistrate may (refuse to issue process for the appearance of witnesses, when, he considers the application to be for the purpose of vexation or delay or for defeating the ends of justice, but in such a case the grounds for refusing to summon them shall be recorded in writing. Having summoned them however he must be presumed to have concluded that they are not being produced by the accused for the purpose of vexation or delay, etc. and therefore he should hear them, and in any case he must record his reasons for not hearing them in writing.

4. This alone would be sufficient to vitiate the proceedings. It has further been pointed out that the conduct on account of which the applicant was prosecuted took place in 1932 and that the result of it was to bind him to be of good behaviour for one year. It has been suggested therefore that the order would not have been very effective, but Dr. Wali Ullah has pointed out that there is other evidence on the file which relates to the conduct of the applicant which took place subsequently in 1932. I have already remarked that I have not thought it necessary to go into the evidence as the present order must be set aside on the grounds of the irregularity I have mentioned. I therefore accept the application, set aside the orders of the Magistrate and of the Sessions Judge, and direct that the bond of sureties if provided be discharged.

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