

Khiali Vs. Emperor

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Court : Allahabad

Decided On : Jan-03-1917

Reported in : AIR1917All316; 38Ind.Cas.1004

Judge : George Knox, J.

Appellant : Khiali

Respondent : Emperor

Judgement :

George Knox, J.

1. This is an application in revision. The order with which it is concerned is an order passed by the learned Sessions Judge of Mainpuri. It appears that one Khiali had by the Committing Magistrate been offered a pardon in the case of Emperor v. Khushi Ram and had been examined on oath as a witness for the Crown both in the Court of Session and of the Committing Magistrate. In the Court of Session he totally denied having made any statement in the Court of the Committing Magistrate and added that he took no part in the dacoity. On this the learned Sessions Judge directed the Committing Magistrate to record evidence and to commit Khiali to the Sessions on a charge under Section 396, Indian Penal Code, and added the words 'pardon offered to Khiali is declared to be forfeited.' The pleas taken in revision are that the learned Sessions Judge had no jurisdiction to withdraw the conditional pardon, that there was no ground for the trial of the

applicant under Section 396, Indian Penal Code, and that he could not be prosecuted for any offence other than that of giving false evidence. In support of the first plea I was referred to the case of Queen-Empress v. Ramasami 24 M. 32 : 2 Weir 396. In that case the learned Judges, following a Calcutta decision in Queen-Empress v. Manick Chandra Sarkar 24 C. 492 : 12 Ind Dec. (N.S.) 996, held that the proper authority to withdraw a pardon is the authority which granted it. But in the very same case the learned Judges who were asked to quash the commitment on the ground that it was an illegal commitment refused to do so and directed the Sessions Judge to proceed with the trial according to law. Whatever weight is to be attached to this judgment, the same High Court in Kullan v. Emperor 2 Ind. Cas. 343 : 32 M. 173 : 9 Cr. L.J. 671 held that under Section 339, Criminal Procedure Code, there is no necessity for withdrawal, and withdrawal has no effect. In this particular case the pardon in question had been tendered by the Committing Magistrate. The person to whom it had been tendered had at the trial before the Sessions Judge retracted the evidence previously given by him, and the District Magistrate, who was not the person who had tendered the pardon, purported to withdraw the pardon, and the appellant was subsequently tried and convicted of dacoity, the offence of which pardon had been tendered. I agree with the view taken by the learned Judges who decided the case of Kullan v. Emperor 2 Ind. Cas. 343 : 32 M. 173 : 9 Cr. L.J. 671. If the accused is committed to the Court of Session, it will still be open to him to plead pardon as a bar to his trial. The prosecution will have to prove that the pardon has been forfeited. The concluding words of the judgment are perhaps out of place and are not to be taken as in any way affecting the plea of the bar of pardon, if put forward. With this modification the application is dismissed.