

Govind and ors. Vs. Emperor

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Court : Allahabad

Decided On : Nov-23-1926

Reported in : AIR1927All270

Appellant : Govind and ors.

Respondent : Emperor

Judgement :

Kendall, J.

1. This is a reference from the learned Additional Sessions Judge of Cawnpore at Banda, recommending that the conviction of the applicants be set aside. The applicants in the Judge's Court were three in number: Govind, Bodhi and Tutar. One Shyam Lal lodged a complaint against them under Sections 342 and 392 of the Indian Penal Code, and the Magistrate proceeded against them under Section 342 of the Indian Penal Code, but after recording the evidence for the prosecution he came to the conclusion that the offence was not under that section but under Section 341 of the Indian Penal Code. He, therefore, refrained from framing a charge, and proceeded to complete the hearing as if the case had been a summons case and not a warrant case. The result was that the accused had no opportunity of resummoning the prosecution witnesses for cross-examination after the charge.

2. The learned Judge has pointed out that this proceeding of the Magistrate was irregular, and has referred in particular to the authority contained in *Ganga Saran v. Emperor* A.I.R. 1921 All. 282. It is admitted by the learned Assistant Government Advocate, that the proceedings of the Magistrate were irregular and that, when once the trial had begun according to the provisions relating to warrant cases, it was not open to the Magistrate to alter the section and to convict the accused without framing a charge.

3. It is open to me to order a re-trial; but in the circumstances reported I do not think that this course is necessary. The learned Judge has pointed out that the evidence for the prosecution is anything but satisfactory, that out of the four witnesses produced by the complainant Parmeshwar has been disbelieved by the Magistrate, and Deota Din and Mahadeo were not named in the original complaint. Seeing that, according to the complainant's story, the complainant was arrested and confined in Deota Din's shop, it is inconceivable that, if Deota Din had been present, he should not have been named. The Magistrate himself believed that the complainant in his evidence had grossly exaggerated the case against the accused and that he had lied in respect of the sum of Rs. 25 of which he says he had been robbed. Much of the evidence for the defence appears to have been unjustifiably disbelieved by the Magistrate. I have myself examined the register of the Raipur Jail containing an entry to show that Govind, one of the complainants, visited that Jail on the date of the alleged occurrence, viz., September 15, There are many entries in this register, both before and after the one in question and there is on the face of it nothing to show that this entry was false. In these circumstances, and in view of the fact that the case is a very patty one, I do not think that any useful result would be attained by ordering a re-trial of the case.

4. Under the provisions of Section 439, read with Section 423, Criminal P.C., I accept the reference, set aside the convictions of the three applicants and the sentences of fine passed against them. The fine, if paid, will be refunded. Let the papers be returned.