

Hira Lal Vs. Emperor

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Court : Allahabad

Decided On : Aug-02-1922

Reported in : 71Ind.Cas.256

Judge : Rafique, J.

Appellant : Hira Lal

Respondent : Emperor

Judgement :

Rafique, J.

1. The applicant, Hira Lal, is a resident of the Cantonment in Meerut. It seems that he began to erect a building within the Cantonment limits and a servant of the Cantonment Authority reported that the said Construction was in contravention of the Cantonment Rules. A notice was served, under the Cantonments Act, upon the applicant. The learned Cantonment Magistrate himself proceeded to the spot and inspected the building under construction to see if a breach of the Cantonment Rules had been committed. Thereafter, according to the applicant, under the sanction of the Cantonment Magistrate, a formal complaint was lodged against him, Hira Lal, the applicant, in the Court of the Cantonment Magistrate. The applicant moved the District Magistrate to transfer his case to some other Court on several allegations, the principal of which was that the prosecution having been started at the instance or under the sanction of the Cantonment Magistrate, he, the

applicant, apprehended that, he would not have an impartial trial. An explanation was called for by the District Magistrate from the Cantonment Magistrate. In his explanation of the 21st of June the learned Cantonment Magistrate admits that 'having seen the unauthorised building, he naturally ordered the prosecution in his capacity as Secretary of the Cantonment Committee.' The District Magistrate, however, rejected the application for transfer. Thereupon the applicant came to this Court. The learned Government-Advocate opposes the application. I think, on a consideration of all the circumstances in the case and specially taking into consideration the fact that the prosecution of the applicant was ordered by the learned Cantonment Magistrate after inspection of the building in question in his capacity as Secretary to the Cantonment Committee, it would be more advisable if the case were tried by another Court. I do not for a moment say that the applicant will not have an impartial trial before the learned Cantonment Magistrate. But it is quite, conceivable that, in the circumstances of the present case, there is a reasonable apprehension in the mind of Hira Lal, the applicant, that he would not have an impartial trial in the Court under whose order the prosecution has been started against him. I, therefore, allow the application and transfer the case against Hira Lal, from the Court of the learned Cantonment Magistrate to that of the learned District Magistrate. The latter will either try the case himself or transfer it for trial to some other Magistrate subordinate to him.