

Bindeshri Dube and ors. Vs. Emperor

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Court : Allahabad

Decided On : Aug-13-1920

Reported in : AIR1920All266; 59Ind.Cas.193

Judge : Gokul Prasad, J.

Appellant : Bindeshri Dube and ors.

Respondent : Emperor

Judgement :

Gokul Prasad, J.

1. This is an application to revise an order of the District Magistrate of Basti directing, as he says in his judgment, a re trial of the applicants under Section 437 of the Code of Criminal Procedure. He further says that the trial will take place in his Court.' Perhaps, the District Magistrate was thinking of a farther inquiry and has confused the re trial with what the law allows a further inquiry. Of course, he could not under the law direct a re trial by himself. The order, as it is put down, strictly speaking, is without jurisdiction, but taking the order to be as one passed under Section 437 of the Code of Criminal Procedure there are serious difficulties in the way of the Magistrate's order being confirmed. Before proceeding to discuss the circumstances of the case one has to bear in mind some of the general principles which have to be considered and applied in deciding a matter like the present one. One of those is that, if the circumstances and the evidence are such

that two different Courts might take a different view of the evidence, no further inquiry should be directed; vide Chandan v. Kallu 9 Ind, Cas. 274 : 8 A.L.J. 45 : 12 Cr. L.J. 45. Another principle has to be borne in mind that no Court is to pass an order to the prejudice of an accused person without giving him a notice to show cause against it. It is unnecessary to enter into the question of want of notice for the purposes of deciding this application. I have been taken through the judgment of the presiding officer of the first Court and it seems to me a well considered and reasoned judgment which can, under no circumstances, be said to be either perverse foolish or prima facie incorrect. There is no suggestion in this case that any further evidence is forthcoming and it is difficult to understand on what grounds the District Magistrate has set aside the order of discharge passed by the first Court and directed, what he calls, a re trial. I, therefore, set aside, the order of the District Magistrate directing a re trial or a further inquiry if that word means that and direct that no further action be taken against the accused.

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