

Gayani Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/479169

Court : Allahabad

Decided On : Aug-15-1916

Reported in : AIR1916All48; 36Ind.Cas.141

Judge : Walsh, J.

Appellant : Gayani

Respondent : Emperor

Judgement :

Walsh, J.

1. I need hardly say that in questions arising under Section 110 and, what is really a cognate section, Section 107, the moment it is shown, speaking for myself, prima facie that there is something which the Courts below have done either in excess of their powers, or by a too summary exercise of their powers, or by misapplying the rules of evidence or by not giving due effect to the evidence for the defence, I should have no hesitation in admitting an application for revision; but, on the other hand, it has to be borne in mind that the somewhat difficult administration of this section depends fundamentally on two things: the view which the Court below takes of the witnesses who speak to these facts; and I agree with what was said by Mr. Justice Alston in the case *See Shiam Lal v. Emperor* 2 Ind. Cas. 225--Ed., referred to that this Court will not interfere on the merits except in very exceptional cases, because it is idle to suggest that I or any other Judge of

the High Court sitting here with only the paper evidence before me, and provided the lower Court has addressed itself to the right question and tried the case according to law, should presume to differ on questions which are purely questions of fact and questions depending on the demeanour of witnesses. I think further that one would be justified in interfering in revision if it is shown that the lower Court, that is the second Court, in hearing the appeal has not taken the trouble to re-hear the case in appeal; and I agree entirely with what Mr. Justice Alston said in regard to that, but I think it is quite clear that what he meant and indeed what he said was that the judgment of the lower Appellate Court should show that it has really and not nominally gone through the record. He wound up by saying, 'it is not a question of the length of the judgment but of its matter.' That means that it is not necessary for the lower Appellate Court to set out over again in detail all the points in the evidence and the reasons, provided that it is clear and the Court has shown by its judgment that it has taken the trouble to re-hear the case; and I think that this judgment shows conclusively that the District Magistrate examined the evidence and examined the judgment, and did that which Mr. Justice Alston said it was his duty to do. In my view it would be a waste of public time to admit this case in revision, because the only serious argument suggested for it is that both Courts have gone wrong on the evidence. The only result of admitting it would be that I should have to go through the whole of the evidence again, and even if I felt that, sitting as a Judge of first instance, I might have come to a different conclusion, I should nonetheless feel myself bound to adopt the view of the Judge. I dismiss, this application.