

Emperor Vs. Adhin

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SooperKanoon Citation : sooperkanoon.com/479203

Court : Allahabad

Decided On : May-09-1916

Reported in : AIR1916All56; 36Ind.Cas.143

Judge : Rafique, J.

Appellant : Emperor

Respondent : Adhin

Judgement :

Rafique, J.

1. This is an application in revision on behalf of the Local Government, praying that the conviction of one Adhin and the sentence passed on him be quashed and that the Magistrate be ordered to commit him for trial to the Court of Session. Adhin is admittedly a member of a criminal tribe and he was registered as such on the 20th of August 1914. He was charged before the Magistrate with house-breaking by night under Section 457 of the Indian Penal Code. The charge was proved against him and he was sentenced to fifteen months' rigorous imprisonment. The prosecution wanted the learned Magistrate to put off the case to give evidence of one or two previous convictions of Adhin in order to get him punished under Section 23 of Act III of 1911. The learned Magistrate held that as the previous convictions related to a date prior to the passing of the Criminal Tribes Act (III of 1911), it would be useless to grant the postponement prayed for.

He was of opinion that Section 23 of the said Act could only be applied if the previous convictions had been made after the accused had been registered as a member of a criminal tribe. The learned Government Advocate contends that the interpretation of Section 23 of Act III of 1911 by the learned Magistrate is erroneous. In support of his contention he relies on the case of Emperor v. Mendai 35 Ind. Cas. 824 : 3 O.L.J. 265 : 17 Cr. L.J. 392, decided by the Judicial Commissioner of Oudh last year. In that case the learned Judicial Commissioner held that it was a matter of indifference whether the tribe of which the accused was registered as a member was notified or not as a criminal tribe at the time of the previous convictions. All that the section declares is that once a tribe has been notified under Section 3, any member of that tribe who has been convicted subsequent to the date of the notification and who has had a previous conviction is liable to enhanced punishment under Section 23 of Act III of 1911. I agree with this view, set aside the conviction and sentence passed on Adhin and direct the learned Magistrate to admit evidence of previous convictions and, if in his opinion the previous convictions are proved, to commit the accused to the Court of Session for trial. The period of sentence already undergone by the accused will be taken into consideration by the learned Sessions Judge when awarding sentence.