SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Khalbal Vs. Muhammad Yusuf

Khalbal Vs. Muhammad Yusuf

SooperKanoon Citation : sooperkanoon.com/479696

Court : Allahabad

Decided On : Jun-05-1924

Reported in : AIR1924All616; 82Ind.Cas.366

Judge : Boys, J.

Appellant : Khalbal

Respondent : Muhammad Yusuf

Judgement :

Boys, J.

1. This is a. Reference by the District Magistrate of Hamirpur recommending this Court to set aside the conviction and sentence of three months' rigorous imprisonment passed against Khalbal under Section 2 of Act XIII of 1859. He recommends this on two grounds:

(1) That the complaint was not brought within three months of the neglect to perform the contract as required by the Amending Act XII of 1920, and

(2) That the Trying. Magistrate being a Magistrate of the Second Class only had no jurisdiction to try the case.

2. As regards the first point the date of agreement was the 2nd of June 1922 and the money paid Rs. 114 was paid on the 7th of June 1922. Work to the value of

Rs. 40 was done in June and July 1922 and it should have been completed within one year of the date of agreement, i.e. before June 7th, 1923, as appears from the statement of the complainant. The accused neglected to do any further work after July 1922. In reference to this the Trying Magistrate explains that he overlooked the Amending Act XII of 1920, because he is not supplied with copies of such Acts and when he sent for Act XII of 1859 from the library of the District Magistrate he was not supplied with a copy of the Amending Act, XII of 1920. It is very reasonable explanation on his part and I consider that he was in no way to blame for the oversight. At the same time the defect is one which goes to the root of his order and on that ground alone the order must be set aside.

3. As to the second point the learned Honorary Magistrate respectfully points out that the District Magistrate is in error in holding that he had no jurisdiction to try the case. He refers to the end of Schedule III of the Code of Criminal Procedure by the last entry and the penultimate entry in which an offence punishable under a law other than the Penal Code with imprisonment for less than one year is triable by any Magistrate and less than three years by any Magistrate of the. Second Class or by a more Senior Magistrate, etc. The learned Honorary Magistrate does not, therefore, appear on this ground to have committed any error in trying the accused. A third point that I notice myself is that the learned Honorary Magistrate having convicted the accused has ordered him to pay or in default to go to Jail for three months. It seems to me clear that under Section 2 of Act XIII of 1859 as amended by Act 1920 the Magistrate should have ordered him to re-pay 'within such period' as he, the Magistrate, thought fit. It is clear that some period of grace, which period is in the discretion of the Magistrate, was intended to be allowed to the accused. For this oversight the learned Honorary Magistrate is again not to be blamed as the provision occurs in Act XII of 1920 of which he had no copy. For the reason that the complaint was not made within three months of the accused's default I set aside the order. The accused having been released on his own bond under the orders of the District Magistrate need not surrender and his bond is discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com