

Abdul Aziz Vs. Emperor

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Court : Allahabad

Decided On : Sep-23-1916

Reported in : 36Ind.Cas.492

Judge : Walsh, J.

Appellant : Abdul Aziz

Respondent : Emperor

Judgement :

Walsh, J.

1. This case has been referred to the High Court under a misapprehension. A boy named Abdul Aziz was employed apparently in an electrical workshop. He took a bicycle away belonging to one of the engineers, as, he says, at the instance of another person who apparently laid some claim to it, and he, the accused, actually'. changed some of the parts. It was a wicked theft, which was a very clumsy one. It was done in broad daylight and the bicycle remained upon the premises although changes were made in it. Every single witness called for the prosecution gave the boy a good character. The boy himself protested that he had been used as a tool and that he was not aware that he was engaged in a theft. In fact he objected to doing something to the bicycle on the ground that he might be implicated, and he said he was satisfied by the answers he got. It would not be fair to form any opinion as to whether this other person in the works was really the

guilty party. I, therefore, assume that this youth of fourteen did in fact yield to temptation and commit a deliberate theft such as he has been convicted of. He is fourteen. It is quite clear that he was not alone in the transaction and, as I have said, everybody gives him a good character. When he was charged, the Magistrate on the 24th of July referred the case to the District Magistrate for orders pointing out the age of the boy, and the District Magistrate sent it back to him to dispose of in accordance with the directions laid down for dealing with any reference to the law punished the accused by binding him over in his own recognizance of Rs. 50 and two sureties of Rs. 50 each for a period of one year to appear and receive judgment when called upon, and in the meantime to be of good behaviour. The District Magistrate of Jhansi drew attention to the fact that Section 562 of the Code of Criminal Procedure did not apply, because the offence under Section 411, Indian Penal Code, was not included therein being punishable by more than two years imprisonment, and at the instance of the District Magistrate the sessions Judge has referred it to this Court. The explanation, which it is usual for the Magistrate responsible for the conviction to submit simply says that he has nothing to say. Now it is quite true that Section, 562 is not applicable to this case, but Section 31 of Act VIII of 1897, read with the definition of youthful offenders, enables practically any Court, at any rate concerned in this matter, in the case of an offender under fifteen, to deliver him to his parents with or without sureties for his future good behaviour. It is to be regretted that the existence of this section should apparently be unknown, although the Act has been in existence for nineteen years to either the District Magistrate or to the Sessions Judge in this particular case. It is little odd that the Magistrate himself did not refer to it, and possibly he acted under it without being aware of the reference and where it was to be found. It clearly extends very considerably the provisions of Section 562 of the Code of Criminal Procedure, which although later in date is a reproduction of earlier legislation. The case must go back to the Magistrate who tried the case with the following direction: If he already has two sureties of Rs. 50 each which are satisfactory to him his order will stand. On the other hand if nothing has been done, I modify the order by cancelling the provision for a surety by the boy himself, and direct that he be delivered to such person as the Magistrate finds to come within the description of Clause (6) of Sub-section (1) of Section 31 of Act VIII of

1897, on the condition that such person shall execute a bond for the sum of Rs. 50 with one additional surety of Rs. 50 to be responsible for his good behaviour for twelve months.

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