

Chander Sen Vs. Emperor

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Court : Allahabad

Decided On : Dec-20-1922

Reported in : AIR1923All383; 73Ind.Cas.576

Judge : Walsh, J.

Appellant : Chander Sen

Respondent : Emperor

Judgement :

Walsh, J.

1. In this case a pantiha coolie had stolen a brooch worth Rs. 20 which he sold to the present applicant Chander Sen for one anna. Chander Sen was examined as a prosecution witness and admitted that he had given the boy one anna and that he handed the brooch on to a caste-follower who was a sonar. He represented himself as a philanthropist which, of course, is nonsense. The next time he wants to do an act of philanthropy and give a boy one anna when he is hungry I should advise him not to take a stolen brooch in exchange. The notion that he handed on this ill-gotten gain as a present to his friend the sonar is nonsense. The brooch would only be worth to a sonar what it would fetch, and it is, therefore, reasonable to suppose, in fact quite certain, that Chandra Sen intended to divide the proceeds with his friend. It was clearly a dishonest act which deserved punishment though no more than a petty theft to which, no doubt, he was by chance subjected to a

sudden temptation. The punishment seems to me to have been adequate, and the fine, unless he is a man of some position, rather even. All this, however, is really irrelevant to the question which I have to determine, and is only relevant upon the question whether the authorities in the Magistrate's Court now think it worthwhile to proceed further with this matter, if a further trial is lawful upon which question I express no opinion. But it is quite clear that his revision must be allowed. The trial and conviction were unlawful. The Magistrate quite rightly took cognizance himself of the offence on the evidence of the witness. Section 191 provides that the accused in such a case shall be informed by the Magistrate, before any evidence is taken, that he is entitled to have the case tried by another Court. The meaning of that is obvious. The accused has a right to have the case tried by another Court and he has a right to be told by the Magistrate he has such a right. This was not done. Indeed, the Magistrate himself refused to transfer the case when asked to do so. This omission was fatal to the legality of the trial. It is idle in such a case to talk about acquiescence or waiver. A man has no option but to acquiesce when the decision has already been given against him. No doubt, an accused person in order to save time and trouble of a further hearing may waive his right. He can only waive it when he is distinctly told in accordance with the provisions of the Act that he has the right to decline to be tried by that Court. When he has been so told he can decide whether he waives the right. Nothing of that kind has happened here. The conviction and sentence must be set aside and the fine, if paid, refunded.

2. Having regard to the state of work in the Criminal Courts, I should not myself consider it necessary to proceed further with a re-trial.

3. Let the brooch be returned to the Magistrate to enable him to return it at once to Miss Cruddas.