Kohna Ram Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/484311

Court : Allahabad

Decided On : Jun-28-1922

Reported in : AIR1922All502; 68Ind.Cas.32

Judge : Walsh and ;Ryves, JJ.

Appellant : Kohna Ram

Respondent : Emperor

Judgement :

Walsh, J.

1. In our opinion this application must succeed. The fact that the matter has been in one form before another Judge of this Court is irrelevant, It was referred to this Court by the Sessions Judge for enhancement of sentence. A learned Judge of this Court looked into the matter and came to the conclusion that there was no ground for issuing notice. It would amount to a denial of justice to accept the argument of the Assistant Government Advocate that a reference by a Sessions Judge which this Court may or may not see fit in its discretion to entertain, resulted in depriving a convicted person of the right to apply to this Court in revision. It by no means follows from this view that any accused person has the right to come in revision more than once. At any rate he would come with little hope of success. The mere fast that he had failed on his first application to raise the point whish he relied upon in his second, would give a discretionary power not to entertain the

second application at all.

2. On the second point I hold a very clear view, without going into the authorities at all which have been discussed in a very able judgment by the Sees ions Judge who has taken a very clear view of the matter, that there is one fact in this ease which marks it off from any case whish has been cited in argument. The charge might have been made against the accused under Section 182 or Section 211,but it seems to me to be contrary to public policy and to the recognised principles of the administration of the Criminal Law that when a charge has been launched which requires sanction by a particular authority and that authority has refused sanction, to hold that it is open to a complainant to alter his election, shift his ground and start a fresh charge on an alternative section which docs not require sanction. He should have thought of that before. A useful test to my mind is to assume that the charge under Section 182 had been permitted to proceed to judgment; if it had resulted in a conviction which was subsequently set aside for want of sanction, or, on the other hand, in an acquittal also for want of sanction, it seems to me that under Section 403, Criminal Procedure Code, that fact would have been an answer to a subsequent charge-under Section 211, The point may seem technical but a question of principle is involved, and, however right the conviction' in this case may have been on the merits, I think the only course is to entertain this application and quash the conviction. The conviction is, therefore, set aside, The fine, if paid, must be refunded.

Ryves, J.

3. I agree.

4. We accept the application in revision and quash the conviction. The fine, if paid, must be refunded.