

Joti Prasad Vs. Durga Prasad

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Court : Allahabad

Decided On : Jul-13-1923

Reported in : 77Ind.Cas.806

Judge : Daniels, J.

Appellant : Joti Prasad

Respondent : Durga Prasad

Judgement :

Daniels, J.

1. This is an applicaticm for revision of an order of the Sessions Judge of Mainpuri setting aside a sanction for the prosecution of Durga Prasad for perjury. durga Prasad was arrested in possession of a battery said to have been stolen. He was the servant of Chaudhri Badan Sinyh, Honorary Magistrate. He had in his possession a letter which he said he had written at the dictation of Badan Singh showing for that he was being sent to return the battery to one Joti Prasad. Joti Prasad as put on his trial under Section 410, Indian Penal Code, but acquitted, the Trying Magistrate being of opinion that the letter of Durga Prasad was not written at the dictation of Badan' Singh and that Durga Prasad had sworn falsely sin saying that it was so written. Badan Singh himself swore that the letter was genuine and this Court has already rejected an application for the prosecution of Badan Singh.

2. As this matter has already been before two Courts under Section 105, Criminal Procedure Code this Court can only interfere, if at all in the exercise of its Revisional jurisdiction under Section 439, Criminal Procedure Code. Sir George Knox in *Choti v. Khacheru* 58 Ind. Cas. 250 : 42 A. 649 : 18 A.L.J. 758 : 2 U.P.L.R. (A.) 353 : 21 Cr.L.J. 746, held that no revision lay in such cases, Mr. Justice Piggott in *Ahsanullah Khan v. Mansukh Ram* 25 Ind. Cas. 350 : 36 A. 403 : 12 A.L.J. 511 : 15 Cr.L.J. 598 held that the Court could interfere but only in order to prevent a gross and palpable failure of justice. Whichever view is correct, and I incline to the view of Mr. Justice Piggott, this is not a case in which I shall be justified in disturbing the order of the Court below. The case against Durga Prasad stands on the same footing as that against Badan Singh; If Badan Singh's evidence was true, that, of Durga Prasad was true also. The Court below was of opinion that the evidence was not sufficient, to justify a prosecution and I decline to interfere with this order. I, therefore, dismiss the application.

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