

King Emperor Vs. Abdul Malik

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Court : Chennai

Decided On : Apr-08-1929

Reported in : AIR1929Mad744; 121Ind.Cas.762; (1929)57MLJ470

Appellant : King Emperor

Respondent : Abdul Malik

Judgement :

ORDER

Wallace, J.

1. Accused does not appear. I am asked to enhance the sentence of imprisonment passed on accused on the ground that it is much too light for an old offender. I agree that it is much too light if accused is an old offender. The difficulty is that I find no proof of that. I am told that the practice in the Presidency Magistrate's Courts is to accept a mere certificate by the Police as proof that an accused is an old offender and that the particulars of previous convictions are neither entered in the statement of charge nor read out to him. All the information given to accused is that he is charged under Section 75, Indian Penal Code, which of course conveys nothing to him. He is clearly entitled to challenge the fact of the various previous convictions made matter of charge against him, and if he challenges these, then proof of these convictions and of his identity with the person previously convicted must be given. If the present practice is as I am now informed then the sooner it is

altered the better. An accused person cannot be sentenced to enhanced punishment as an old offender until there is some proof or admission by him before the Court that he is the person who committed the previous offences. I am, therefore, unable to enhance the sentence on the ground of accused being an old offender as there is no proof that he is.

2. Apart from that it appears to me that the Chief Presidency Magistrate was unduly lenient in making the sentences in these two cases run concurrently. There were two distinct house-breakings and it is a mistake to treat such offences leniently. I direct that the sentence in C.C. No. 15013 do come into force on the expiry of the sentence in C.C. No. 15014 of 1928.

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