

In Re: Mohideen Batcha Sahib

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Court : Chennai

Decided On : Sep-25-1913

Reported in : (1913)25MLJ484

Appellant : In Re: Mohideen Batcha Sahib

Judgement :

ORDER

Ayling, J.

1. The Sub-divisional Magistrate has set aside the conviction of the accused for an offence under Sections 352, 379 and 426 of the Indian Penal Code on the sole ground that the facts disclosed in the Prosecution evidence amounted to an offence under Section 392 of the Indian Penal Code, which the original Magistrate being only of the 2nd class, was not empowered to try. He has further proceeded to remand the case to the same Magistrate for re-trial according to law presumably meaning that action should be taken under Section 346, Criminal Procedure Code. The Sub-Divisional Magistrate is wrong in considering that the Original Court's proceedings are void. It has been held both by this Court and by the Bombay High Court that, provided the Court had the power to try the offence of which it has convicted the accused, it is not necessary to quash the conviction merely because the facts disclose a more serious offence, which the Court was not competent to try, unless the accused was prejudiced or the sentence was inadequate. Vide Queen Empress v. Gundy I.L.R. (1889) B. 502 and King Emperor v. Ayyan I.L.R.

(1901) M. 675.

2. In the present case the robbery, if robbery it were, was of the most technical and trivial description, the accused having simply slapped the complainant on the head and snatched away a basket of sweetmeats. The accused was in no way prejudiced and the sentence imposed was perfectly adequate. There is no reason for subjecting the accused to a fresh trial.

3. Under these circumstances the order of the Sub-Divisional Magistrate directing re-trial is set aside. He is directed to restore the appeal to his file and dispose of it according to law, in the light of the above remarks.

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