

Queen-empress Vs. Alagu Kone

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Court : Chennai

Decided On : Oct-05-1892

Reported in : (1893)ILR16Mad421

Judge : Arthur J.H. Collins, Kt., C.J. and ;Parker, J.

Appellant : Queen-empress

Respondent : Alagu Kone

Judgement :

1. We have no doubt that the statement A was really taken under the provisions of Section 164 of the Code of Criminal Procedure and the only question is whether the Magistrate acting under that Section had power to administer an oath.
2. The Additional Sessions Judge has distinguished this case from that of Empress v. Malka I.L.R. 2 Bom. 643 on the ground that, under Act X of 1872, the Magistrate was empowered by law (Section 331) to administer an oath. That Section was not re-enacted in the present Code, since under the Indian Oaths Act X of 1873, all Courts are authorized to administer oaths (Section 4), while Section 14 of the same Act imposes the obligation to state the truth. The term 'Court' includes all Magistrates (Section 3 of the Indian Evidence Act).
3. The direction in Section 164 that the statement shall be recorded in one of the manners prescribed for recording evidence is merely a direction as to procedure. The statement itself was one which the law (Section 164, Criminal Procedure

Code), permitted to be made before the Court by a witness, and is therefore evidence within the definition of Section 3 of the Indian Evidence Act. The person making it was a witness within the meaning of Section 5 of the Oaths Act, and therefore one to whom an oath or affirmation might be administered.

4. The case referred to, *Queen-Empress v. Bharmā* I.L.R. 11 Bom. 702 does not apply, as the ground of decision there was that the Third-class Magistrate, who took the statement, had not authority to carry on the preliminary inquiry. Here the statement was taken by the Committing Magistrate in a stage of an inquiry which he was authorized to conduct under the Code of Criminal Procedure.

5. We must reverse the acquittal and direct that the case be re-tried.

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