

**Badsha Vs. Emperor**

**Badsha Vs. Emperor**

**SooperKanoon Citation :** [sooperkanoon.com/824627](http://sooperkanoon.com/824627)

**Court :** Chennai

**Decided On :** Oct-29-1924

**Reported in :** 74Ind.Cas.59

**Judge :** Venkatasubba Rao, J.

**Appellant :** Badsha

**Respondent :** Emperor

**Judgement :**

**Venkatasubba Rao, J.**

1. The accused was convicted by the Second Presidency Magistrate, Madras, of an offence punishable under Sections 420 and 379, Indian Penal Code, and sentenced to under go rigorous imprisonment for a term of one year. On appeal to this Court by the accused, I was of the opinion that it was expedient that the accused should be released on probation of good conduct under Section 562 of the Cr. P.C. as he was only 17 or 18 years of age and a first offender. Accordingly, I directed that he should be released on his entering into a bond of the, kind specified in Section 562 for Rs. 1,000 with two sureties each for a like sum.

2. The Chief Presidency Magistrate has reported that the accused has not furnished security and submitted the case for orders of this Court.

3. The point to be decided is whether in the circumstances the punishment originally awarded stands. I do not think it does. Sub-section 2 of Section 562 runs thus: 'An order under this section may be made by any Appellate Court or by the High Court when exercising its power of revision'.

4. The order made by me on the previous occasion is tantamount to the setting aside of the sentence passed by the Magistrate. Under the section, the Court of first instance may either sentence the accused to punishment or in the alternative release him on his entering into a bond. The High Court did what the Magistrate ought to have done and released the accused on probation of good conduct. The effect of the order of the High Court is, therefore, to set aside the sentence passed on the accused. The case, therefore, must be dealt with as if the accused had been released on probation of good conduct by the Magistrate himself.

5. This being the position, I have next to consider what the consequence of the accused's failure to furnish security is. The Code is silent on the subject. But, it stands to reason that the proper view to take is that the accused who was convicted but not sentenced to punishment is produced before the Court for the purpose of suitable punishment being awarded. This is the view which the Chief Presidency Magistrate has taken of the law and I think he is perfectly right.

6. As regards punishment, the accused has been in Jail for a little over five months in pursuance of the sentence originally passed by the Magistrate. The punishment already undergone is, in the circumstances, adequate and I, therefore, direct him to be released from Jail.