

The Empress Vs. Abdool Karim

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Court : Kolkata

Decided On : Jun-06-1878

Reported in : (1879)ILR4Cal18

Judge : Ainslie and ;Broughton, JJ.

Appellant : The Empress

Respondent : Abdool Karim;golam Mahomed

Judgement :

Ainslie, J.

1. Section 274 of the Code of Criminal Procedure takes away the right of appealing from persons convicted by Magistrates of the first class exercising summary jurisdiction when the sentence is one of imprisonment, not exceeding a term of three months. Therefore, in the present case, the convicted persons, who have been sentenced to a term of imprisonment not exceeding three months, are deprived of the right of appeal on the facts, if the Deputy Magistrate was right in trying the case summarily.

2. The Deputy Magistrate seems to think that the fact that he had not the Police papers at the time that the prisoners were put on their trial entitled him to deal with the case on the verbal statement of a Court Sub-Inspector. But on looking at the record it appears that the very first witness for the prosecution states distinctly that

there were two persons who appear to have been the leaders of the unlawful assembly if the evidence of this witness is to be believed) armed with swords. It is quite clear that the Deputy Magistrate should have looked to the sworn evidence before him, and not to any verbal statement of a Court Sub-Inspector, for the purpose of determining how the trial was to be conducted; and when he found that the charge actually made before him was a charge which would not fall under any section of the Penal Code admitting summary trials, the proceedings should have been framed as in ordinary trials. If this conviction had been recorded under Section 144, the accused would have had a right of appeal.

3. This Court has frequently laid down that no Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration and not to be believed.

4. As the Deputy Magistrate was bound to treat this case as a charge under Section 144, it follows from the construction that has been put on the 34th section of the Criminal Procedure Code that we are bound to hold his proceedings void.

5. All these proceedings must, therefore, be quashed, and the Deputy Magistrate must try the prisoners de novo.

6. The same order will be made in the case of Golam Mahomed.

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