

Hari Charan Singh Vs. Queen-empress

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Court : Kolkata

Decided On : Jan-11-1900

Reported in : (1900)ILR27Cal455

Judge : Prinsep and ;Stanley, JJ.

Appellant : Hari Charan Singh

Respondent : Queen-empress

Judgement :

Prinsep and Stanley, JJ.

1. The petitioner before us was charged with a breach of the Coolie Emigration Act, and was acquitted on the ground that he was not responsible, being a servant of some one who might have transgressed the law. The Magistrate, in passing this order, was inclined to proceed against the master, but, before so doing, he wished to ascertain clearly whether there were sufficient grounds for his taking action, that is to say, for his proceeding under Section 190(c) of the Code of Criminal Procedure to take cognizance of the offence. He accordingly examined the petitioner on oath, and he thereupon summoned the master to appear before him and answer a charge under the Coolie Emigration Act. At the trial, the petitioner was examined as a witness, and he then gave evidence contradicting the former statement that he had made to the Magistrate. He has accordingly been prosecuted and convicted by the Magistrate for having intentionally given false

evidence by reason of such contradictory statements, which were not reconcilable. On appeal the conviction and sentence were confirmed. An objection has been taken before this Court on which a rule has been granted that the conviction and sentence are contrary to law, inasmuch as no offence is established. Now, in order to establish the offence found, it was necessary to prove that both the contradictory statements were such that a charge of giving intentionally false evidence might have been made in regard to either of them or in regard to both of them in the alternative. The question, therefore, arises whether the first statement was a statement coming within the terms of Section 191 of the Penal Code, which defines the offence of giving false evidence. There was at that time, it may be observed, no case before the Magistrate, and the examination was directed simply to obtain information upon which a case might be started against some person not before the Court. The Indian Oaths Act, Section 5, declares that oaths or affirmations shall be made by the following persons: 'All witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having bylaw or consent of parties authority to examine such persons or to receive evidence. Now, the petitioner was at that stage of the proceedings certainly not a witness. He was examined by the Magistrate for the sake of obtaining information on which proceedings could be taken, and, therefore, the Magistrate, although he might examine him to obtain information could not, as we understand the law, examine him on oath. Moreover, there is no authority that, being so examined, the petitioner was bound by any express provision of law to state the truth. Consequently, any charge for giving false evidence founded on this statement is bad, and it therefore follows that the conviction and sentence founded on this statement as being contrary to another statement without any proof or finding that the second statement was false cannot be maintained. The conviction and sentence must therefore, be set aside and the rule made absolute.