

Natabar Khan Vs. King Emperor

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Court : Kolkata

Decided On : Jul-19-1923

Reported in : AIR1924Cal63

Appellant : Natabar Khan

Respondent : King Emperor

Judgement :

1. The Petitioner in this case has been convicted of theft and sentenced to one month's rigorous imprisonment and to pay a fine of Rs. 25. From the record and the explanation submitted it would appear that the Petitioner pleaded guilty. But the trying Magistrate and the learned Sessions Judge who heard the appeal appear to have overlooked the fact that this was a case in which an appealable sentence was passed. Section 263 applies to cases in which no appeal lies and exempts the Magistrate from framing a formal charge in such cases. But there is no such exemption in a case tried summarily in which, as in the present case, the sentence passed is appealable. Further under Section 262, Cr.P.C., it is necessary that in a summary trial the procedure prescribed for warrant cases shall be followed in warrant cases with certain exceptions. One of the distinguishing points between a summons and a warrant case is that in a warrant case sufficient evidence to support the charge must be recorded before a charge can be framed and the accused called on to plead. This apparently was not done in the present case.

2. That being so we must hold that the conviction of the Petitioner was illegal. We accordingly set aside the conviction and sentence passed on the Petitioner and direct that he be tried according to law. The fine, if paid, will be refunded.

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