

Abdul Ghani Vs. Emperor

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Court : Kolkata

Decided On : Jan-22-1902

Reported in : (1902)ILR29Cal412

Judge : Prinsep and ;Stephen, JJ.

Appellant : Abdul Ghani

Respondent : Emperor

Judgement :

Prinsep and Stephen, JJ.

1. The petitioner was convicted by the Magistrate under Section 52 of the Post Office Act (VI of 1898). On appeal the Sessions Judge discharged the accused on the ground that the Magistrate had no jurisdiction to hold the trial. Further proceedings were then commenced by another Magistrate,' who has committed the accused for trial to the Sessions Court, and on objection taken by him, a Rule has been granted by a Bench of this Court to show cause why the order of commitment should not be set aside upon the ground that, having regard to the order of the Sessions Judge, the Magistrate has no authority to make such commitment. A commitment, it may be observed, can be quashed only on a point of law (see Section 215 of the Code of Criminal Procedure). The point of law for which the learned Pleader for the petitioner contends is that, inasmuch as the Sessions Judge in appeal was empowered to make an order for retrial by a Court

of competent jurisdiction and had not done so, therefore the Magistrate was without jurisdiction in taking further proceedings. The proceedings taken by the first Magistrate are under Section 530 (b) void, and therefore the proceedings, since taken, cannot in any sense be regarded as a retrial. Now, even on the argument of the learned Vakil, the Sessions Judge could not pass the order which he contends for. Section 423 contemplates an order for a retrial by a Court of competent jurisdiction. No trial having taken place, there could, not possibly be a retrial.

2. In the next place we are of opinion that there was no bar to the proceeding taken by the Magistrate. The only bar which could be applied to such a case would be by the application of Section 403 of the Code of Criminal Procedure. But clearly Section 403 does not apply, because the explanation to it declares that the discharge of the accused is not an acquittal for the purposes of that section, and we may observe that Section 403 expressly deals with an order of acquittal or conviction passed by a Court of competent jurisdiction. We cannot in any way accede to the argument of the learned Pleader that, assuming that it could have been so, because the Sessions Judge on appeal could have ordered a trial by a Court of competent jurisdiction and did not do so, it must be understood that he thought that such proceedings should not be held. We cannot understand how any such omission can amount to an impediment to a trial, when no trial has taken place. We may observe that we have constantly cases before us of the same nature in which proceedings of the Magistrate are set aside for want of jurisdiction, and it has never occurred to us that it was necessary in every such case to declare whether further proceedings should or should not be taken. Occasionally it has happened that the Criminal Bench has expressly declared that under the circumstances of a particular case no further proceedings should be taken. The Rule is therefore discharged.