

Raghubir Kahar Vs. Emperor

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Court : Kolkata

Decided On : Mar-11-1932

Reported in : AIR1932Cal865

Appellant : Raghubir Kahar

Respondent : Emperor

Judgement :

Panckridge, J.

1. In this ease the learned Additional Presidency Magistrate has convicted the accused of an offence punishable under Section 420/75, I.P.C., and sentenced him to undergo rigorous imprisonment for two years. A certain defect in the procedure has been pointed out to us. It is that there is no formal charge framed as contemplated by Section 254, Criminal P.C. This was a warrant case and the provisions as to the procedure to be followed in the trial of a warrant case by a Magistrate are laid down in Oh. 21 of the Code. That chapter applies to. a Presidency Magistrate as much as to other Magistrates except where Presidency Magistrates are specifically excluded from its operation. Under Section 254 it is not within the discretion of a Magistrate whether he should frame a charge in writing or not. The section is mandatory and he is prima facie bound to frame a charge. It is obvious that this section is applicable to Presidency Magistrates as well as to other Magistrates. If one turns to Section 362, Sub-section (4), Criminal P.C., it is plain

that the Presidency Magistrates are only excused from framing a charge in certain cases, namely, cases in which no appeal lies. This was an appealable case and it was therefore incumbent upon the Presidency Magistrate to frame a charge under Section 254. The duty of a Presidency Magistrate in this respect has already been made clear in the judgment of C. C. Ghose and Duval, JJ., in the case of *Mahomed Rafique v. Emperor* A.I.R 192S Cal. 537. The head-note of the judgment runs as follows:

In a warrant case it is imperative on the Magistrate to draw up a formal charge against the accused in manner indicated in Section 254, Criminal P.C.

2. We have to consider whether in the circumstances of the case it is necessary for us to set aside the conviction and send the case back for a retrial. The evidence was to the effect that a party of villagers met the accused. The accused offered to show one of the older members of the party the way to the address to which he wished to go. This offer was accepted and the accused took this man to premises No. 14 Olive Street which was not the house to which he desired to go. The property of the complainant contained in a steel trunk was left with a boy named Budh Sagar nephew of the man when the accused took the man with him to No. 14 Clive Street. When the accused returned he told the boy Budh Sagar that his relatives wished to see him at 14 Olive Street. Budh Sagar accordingly went to the place where the accused said his relative was and having failed to find him there returned and found that the accused and his box had disappeared. The complainant, that is to say the man who had been taken by the accused to No. 14 Olive Street, searched for the accused and after two days got him arrested. We think that with regard to this the Magistrate was perfectly right in coming to the conclusion that having contrived to secure the departure of the boy Budh Sagar the accused made off with the box. We are of opinion however that the facts established constitute not cheating but theft. We think also that having regard to the fact that no objection was taken before the learned Magistrate as to the absence of a formal charge and having regard to the circumstances of the case generally no failure of justice has been occasioned by the defective procedure adopted by the Magistrate. In the circumstances for the conviction under Section 420/75 we substitute a conviction under Section 379/75. The Moused had been

previously convicted and we do not think that the sentence is too severe or ought to be altered.

3. We direct that a copy of this judgment be transmitted to the Chief Presidency Magistrate with a direction to him to draw the attention of the other Presidency Magistrates to our observation with regard to the necessity of framing formal charge in an appealable warrant case. The appellant will surrender to his bail and serve out the sentence.

M.C. Ghose, J.

4. I agree.

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