

H. Birks Vs. Emperor

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Court : Kolkata

Decided On : Dec-17-1931

Reported in : AIR1932Cal488

Appellant : H. Birks

Respondent : Emperor

Judgement :

1. In these two appeals the two appellants had orders passed against them by the Fifth Presidency Magistrate under 3. 562, Criminal P.C., directing the appellant in each case to be released on executing a bond of Rs. 200 with one surety of like amount, to be of good behaviour for two years and to come up for sentence when required to do so. This is as much as to say that instead of sentencing the appellants the Magistrate dealt with them under the special provisions of Section 562.

2. A preliminary objection is taken to these appeals being incompetent, under the provisions of Section 411, Criminal P. C, Section 404, Criminal P. C, provides that no appeal shall lie from any judgment or order of a criminal Court save as provided for by this Code or by any other law for the time being in force; and Section 411 provides that any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court, if the Magistrate' has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

3. Learned Counsel has very candidly and, properly admitted that he is unable to maintain the contention that an appeal lies in the present case, having regard to the terms of Section 411. We were indeed referred to the case of Bahadur Molla v. Ismail : AIR1925 Cal329 which at first sight might lend some support to the contrary view. But as pointed out by the learned Counsel himself that case did not arise out of an order passed by a Presidency Magistrate at all. That decision therefore is not applicable to the facts of the present case.

4. The appeals must therefore be dismissed.

5. There is an application in revision in the case of Watts which was filed in this Court on 10th September 1931, that is, long out of time having regard to the fact that the Magistrate's order was passed on 12th June 1931. No Rule was issued on that application and no further order is necessary upon it than to dismiss it.

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