

Gulzari Lal Vs. Emperor

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Court : Kolkata

Decided On : Jun-09-1922

Reported in : AIR1923Cal164,71Ind.Cas.51

Judge : Lancelot Sanderson, C.J. and ;Panton, J.

Appellant : Gulzari Lal

Respondent : Emperor

Judgement :

Lancelot Sanderson, C.J.

1. This was a Rule granted by two of my learned brothers calling upon the Chief Presidency Magistrate to show cause why the conviction of, and the Sentence passed upon, the petitioner should not be set aside on the third ground mentioned in the petition. The third ground is, 'that the Magistrate did not apparently examine the accused under Section 342, Criminal Procedure Code, and the omission to do 90 is an illegality vitiating the conviction.'

2. The accused was charged under Section 54A of the Police Act, and the property which he had in his possession, in respect of which this charge was made, was three bottles of French wine, which, the learned Magistrate in his explanation says, was valuable.

3. The story of the prosecution apparently seems to be that the accused was arrested on information given by Mrs. Singh, whose servant he was. And after Mr. Singh and the Inspector of Police had been examined, the Magistrate, as appears from his explanation, asked the accused 'how he came by the bottles of wine,' and the accused said that a Mehter gave them to him to sell. 'It appears, however, that after this question had been put by the Magistrate to the accused, a further witness was called and that was the Mehter whose name was Kaikatti and he said that he never gave these bottles to the accused. That being the state of the proceedings, the learned Counsel for the accused lays stress upon the latter part of Section 342 of the Code of Criminal Procedure which provides, 'the Court shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined.' Technically speaking, the learned Counsel is right in the point he has taken that the Magistrate should have questioned' the accused after all the witnesses for the prosecution had been examined. This he did not do. Therefore, on this ground, in my judgment, the Rule must be made absolute. I am unable to say whether the accused would have been able to throw any more light upon this question if the learned Magistrate had strictly followed the provisions of Section 342. But it seems to me we have no option in this case except to say that the Rule should be made absolute. Having regard to the fact that the learned Counsel has stated that the accused has already served a substantial part of his sentence and that he is a young man, we do not direct that he should be placed upon his trial again.

4. We accordingly make this Rule absolute, set aside the conviction and the remaining portion of the sentence and direct that the bail bond be discharged.

Panton, J.

5. I agree.