

ismail Sha Vs. Emperor

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Court : Kolkata

Decided On : Jun-09-1925

Reported in : AIR1926Cal692,91Ind.Cas.542

Judge : Suhrawardy and ;Panton, JJ.

Appellant : ismail Sha

Respondent : Emperor

Judgement :

1. This Rule is issued on the ground that the Trial Magistrate erred in not recording the statement of the accused under Sections 342 and 370, Cr.P.C. The Magistrate in his explanation submits that he examined the accused under Section 342. There is no record of the result of the examination but it is noted below the record of the evidence of the witnesses for the prosecution, 'examined under Section 342.' There were three accused persons placed on trial of whom accused No. 3 was acquitted, and Nos. 1 and 2 were sentenced to one month's rigorous imprisonment each. The order of the Magistrate is recorded in a form which is used in the Calcutta Police, Court which bears numbered heads. Column No. 7 mentions 'the plea of the accused and his examination (if any)'. There is no entry against this column and in the whole of the record we have not been able to trace what the plea of the accused really was. The judgment of the Magistrate is exceedingly short. He says: 'Heard parties: Accused No. 3 acquitted. Numbers 1 and 2 sentenced to a month's rigorous imprisonment each'. The record of the case

as made by the learned Trying Magistrate is not in accordance with the requirements of Section 370, Cr.P.C. In the first place the plea of the accused and his examination are not recorded as required by Clause (f) of that section. In the second place, according to Clause (i) of the section, in all cases in which the Magistrate inflicts imprisonment or fine exceeding two hundred rupees or both, a brief statement of the reasons for the conviction should also be recorded. This also is wanting. The Trial Magistrate admits in his explanation that the accused was examined under Section 342. It was, therefore, his duty to record the substance of his examination and his plea. We accordingly think that proper procedure has not been followed in this case and the case should be re-tried.

2. The result is that this Rule is made absolute, and the conviction and sentence of the petitioner set aside and we direct that he be re-tried according to law.

3. The petitioner will remain on the same bail until further order of the Magistrate.

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