

P.E. Billinghamurst Vs. D.B. Meek

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Court : Kolkata

Decided On : May-26-1921

Reported in : AIR1922Cal334,61Ind.Cas.993

Judge : Teunon and; Suharwardy, JJ.

Appellant : P.E. Billinghamurst

Respondent : D.B. Meek

Judgement :

1. In this case it appears that on the 23rd of August 1920 a complaint was lodged before the Chief Presidency Magistrate, charging five persons with the commission of offenses punishable under Sections 420 and 120B of the Indian Penal code.
2. The prosecution was at the instance of the Government of India and the five accused were Waite and Stoddart, two officers working under the Munitions Board, Calcutta, and Billinghamurst, Blackburn and Michael, members of a Calcutta firm known as Spalding and Co.
3. In the course of the investigation preceding the lodging of complaint, the premises of Messrs, Spalding and co. had been searched on the 23rd December 1919, and at various times between that date and the 23rd of August 1920, Billinghamurst, Blackburn and Michael proceeded, Billinghamurst to Burma, Blackburn and Michael to England.

4. Billinghamurst was arrested in Burma on the 1st of September and having been brought under arrest to Calcutta, was released on the 9th of September on his furnishing two sureties each in the sum of Rs. 30,000 for his appearance before the chief Presidency Magistrate, when required.

5. To secure the attendance of Blackburn Michael and Waite who had also gone to England, extradition proceedings became necessary and resulted in the production before the Chief Presidency Magistrate of Blackburn and Michael on the 4th of April of the present year. Under the orders of the High Court of Justice, England, on, it is understood, grounds of health, Waite's surrender was deferred to the 20th of July, when it was to be open to either party to make further application to the said Court.

6. From the 4th of April the case against the accused was postponed to the 18th April and again to the 4th of May, when Billinghamurst, who had meanwhile gone back to Burma, appeared before the chief Presidency Magistrate.

7. On the 4th of May, practically on the ground that it was not advisable to proceed with the case in the absence of Waite, the prosecution applied for an adjournment of the proceedings until the 30th of July, when it would be definitely known whether and when Waite's appearance would be secured.

8. Without taking evidence and notwithstanding the opposition of Billinghamurst, who prayed for an early trial or, in the alternative for his discharge the Magistrate granted this application for an adjournment to the 30th July, while at the same time intimating that the hearing of the case would commence on that day without fail.

9. It is against these orders of the 4th and 13th of May that Billinghamurst has moved this court.

10. On his behalf it is contended that the prosecution having failed to produce evidence as required by Section 252 of the criminal procedure code he is entitled under Section 253 to his discharge.

11. It, however, appears that from the 10th of September 1920, the petitioner did not appear and was not required to appear on any of the dates fixed for the hearing of the case and that his appear and on the 4th of May was not rehired or expected by the prosecution and was due to some misapprehensions on the part

12. But the petitioner has been under arrest and the grave charges preferred have been having over him from the 1st September 1920, and we are not of opinion that the absence of co-accused, even the principal accused, and the desirability from many points of view of joint trial, which is conceded by Counsel appearing for the petitioner, are sufficient reasons for the further postponement of proceedings.

13. We, therefore, in the case of the petitioner set aside the chief presidency Magistrate's orders of the 4th and 13th of May and direct that he do now fix a date, not later than 14 days from this day, for the trial f the case and require those in charge of the prosecution to produce heir evidence.

14. As Michael, Blackburn and Stoddart have no moved this Court, and are not before us at this hearing, we do not think it expedient to make any order as regards them. It will be open to the prosecution in their case to make such application to the Magistrate as they may be advised.

15. In conclusion we desire to add that, as far as possible, the proceedings before the Chief presidency Magistrate should be continued from day to day and completed with all possible dispatch.

16. Let this order be sent down at once.