

Emperor Vs. Donaldson

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Court : Kolkata

Decided On : Mar-13-1916

Reported in : 36Ind.Cas.155

Judge : Lancelot Sanderson, C.J.

Appellant : Emperor

Respondent : Donaldson

Judgement :

Lancelot Sanderson, C.J.

1. I think this case is different, as regards the facts, from the cases which have been drawn to my attention. This is a case where the committal of the accused person, Mrs. Drummond, was by the Committing Magistrate sitting at Barrack-pore within the District of Alipore and the case was committed to the Sessions of the High Court. The case was tried by me sitting at the Sessions, and the accused on Friday last was acquitted. During the course of the trial one of the witnesses, Mr. Donaldson, went back on the statements which he had made before the Committing Magistrate and which were of a material character. When he was examined by the learned Standing Counsel, he admitted that several of the statements which he had made on oath to the Committing Magistrate were false to his knowledge. This matter was mentioned to me at the conclusion of the case, and was adjourned until this morning.

2. An application is now made before me on behalf of the Crown for sanction under Section 195 of the Criminal Procedure Code to prosecute Mr. Donaldson for perjury. I think, however, the proper course to take is to send the case for inquiry to the nearest Magistrate of the first class, under Section 476, and inasmuch as the case comes from the District of Alipore, and I am informed that the nearest Magistrate of the first class is in that District, it seems to me the natural thing is to send the case to him.

3. It does not seem to me that I am prevented from taking this course by the decisions which have been drawn to my attention, viz., *Kedar Nath Kar v. Emperor* 3 C.L.J. 357 : 3 Cr. L.J. 329 and *Emperor v. Sailendra Kumar Das* 6 Ind. Cas. 476 : 11 Cr. L.J. 360 : 37 C. 618 : 14 C.W.N. 767, because the facts of those cases were not the same as in this case.

4. For these reasons, the order I make is that I am of opinion that there is ground for inquiring into an offence referred to in Section 195 of the Criminal Procedure Code, namely, an offence punishable under Section 193 of the Indian Penal Code, which was brought under my notice in the course of the trial of Mrs. Drummond, and having made such preliminary inquiry as may be necessary, I send the case against Mr. Donaldson for inquiry or trial, as the case may be, to the nearest Magistrate of the first class. I will not send Mr. Donaldson in custody. I require him to give security for his appearance before such Magistrate to the satisfaction of the officer of this Court. He will have to appear before the Magistrate to-morrow, and, if he be not then ready to proceed, he will no doubt be afforded ample opportunity by the Magistrate to instruct a Solicitor, or otherwise prepare for his defence.

5. I adjourn the application so far as Section 195 of the Code of Criminal Procedure is concerned, and give liberty to apply, if necessary.