

Abdur Rahim and ors. Vs. Emperor

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Court : Kolkata

Decided On : Nov-03-1924

Reported in : AIR1925Cal928

Appellant : Abdur Rahim and ors.

Respondent : Emperor

Judgement :

1. These are two References made by the Sessions Judge of Sylhet recommending that two commitments by which 44 and 8 accused persons respectively were committed to the Court of Sessions for trial under Section 120B, 489 A, 489B, 489C and 489D of the Indian Penal Code be quashed and a fresh enquiry, preliminary to commitment, ordered on the ground that the provisions of Section 860, Cr. P.C., were not complied with in enquiries that were held.

2. It appears that after the respective commitments in which altogether over 300 witnesses were examined, the two cases were made over to the Assistant Sessions Judge and on trial being commenced by him, 102 witnesses for the prosecution were examined but the provisions of Section 360, Cr. P.C., were not complied with in respect of any of them; that thereafter the attention of the learned Assistant Sessions Judge being drawn to the decision of this Court in the case of Hira Lal Ghose v. The King-Emperor : AIR1924 Cal889 , the procedure of complying with said provisions was adopted in respect of prosecution witnesses, who were thenceforward examined, and in this way about 38 more prosecution

witnesses were examined and their depositions were duly recorded in accordance with the said provisions.

3. Those References have been made by the learned Sessions Judge on the basis of a petition filed by the Public Prosecutor before him by which the Public Prosecutor prayed for a withdrawal of the case to his own file from that of the Assistant Sessions Judge on various grounds, and for obtaining an order for a de novo trial. The learned Judge withdrew the case to his own file, purporting to act under Section 528 (1), Cr. P.C., and then made these References under the provisions of Section 438, Cr. P.C.

4. 43 out of the accused persons have appeared before us; and they have filed a petition praying that the Reference be rejected and that the case be re-transferred back to the file of the Assistant Sessions Judge for the trial to be proceeded with in his Court. They have challenged the bona fides of the course adopted by the Public Prosecutor.

5. We have looked into all the relevant papers and have heard the learned vakil appearing on behalf of the accused persons who have entered appearance in these References and also the learned vakil on behalf of the Crown.

6. Now in the case of *Hira Lal Ghose v. The King-Emperor* : AIR1924 Cal889 , it has been clearly pointed out by this Court that the provisions of Section 360, Cr. P.C. were enacted for the benefit of the witnesses as also for that of the accused persons. There is no question here so far as any of the witnesses are concerned and the accused persons do not complain of any inaccuracy in the commitment record. The trial has commenced, and any application by the accused persons for setting aside the commitment on the ground of non-compliance with the provisions of Section 360, Cr. P.C., during the enquiry preliminary to commitment, apart from the fact that it has not yet been made by them, will not be of any avail if made hereafter. In fact these of the accused who have appeared before us do, as we have said, strongly oppose quashing of the commitment. Questions no doubt may arise as to the admissibility of the depositions if they are sought to be put in under Section 288, Cr. P.C., but such difficulties may perhaps be avoided. In any event we do not see any reason why at the instance of the Crown we should quash the

commitments and direct a de novo enquiry to be held seeing that even in the petition which was filed by the Public Prosecutor about a month after the ruling aforesaid was published, it was not suggested that that course should be adopted, but only that a de novo trial should be held on the commitments already made. Then there is the fact which stares us in the face that most, if not all, of the accused persons are in *hajat* and some of them have been in *hajat* for about a year and a half or so. Having regard to all these matters, even if the Crown anticipates any difficulty in the matter of using the depositions recorded by the committing Magistrate, of which however we can see nothing at present, we decline to subject the accused persons to the harassment of a fresh commitment enquiry.

7. We have considered the matter carefully in all its bearings and we think we shall not be justified in accepting these References in their entirety. Our order is that the cases be re-transferred to the file of the Assistant Sessions Judge in whose file it was, that he do re-call the witnesses in respect of whom the provisions of Section 360, Cr. P.C., were not complied with, and take steps to comply with those provisions so far as these witnesses are concerned and then proceed with and finish the trial in accordance with law.

8. The References are accepted in part only.