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(1879) 09 AHC CK 0003

Allahabad High Court

Case No: None

Empress of India

APPELLANT

Vs

Mangu and Others

RESPONDENT

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Date of Decision: Sept. 2, 1879

Citation: (1880) ILR (All) 342

Hon'ble Judges: Robert Stuart, C.J; Straight, J; Spankie, J; Oldfield, J

Bench: Full Bench

Final Decision: Disposed Of

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### Judgement

Robert Stuart, C.J.

I concur in the opinion expressed by Mr. Justice Oldfield. I also agree with Mr. Justice STRAIGHT in holding that u/s 297 of the Criminal Procedure Code the re-arrest of the accused for the purpose of the appeal may be made.

Spankie, J.

2. On the point submitted to us, I accept the ruling in Queen v. Gobind Tewari ILR Cal. 281, and approve the argument of the Legal Remembrancer in support of his contention that the Court had power to order the arrest of the accused. I observed at the hearing of argument in this case that if the contention quoted in the case referred to above could not be maintained, the High Court, u/s 297 of the Criminal Procedure Code, in any case coming to its knowledge, might, if it appeared that there had been a material error in any judicial proceeding of any Court subordinate to it, pass such judgment, sentence or order thereon, as it thought fit. It is not provided that the order passed should be final, and it might be one preliminary to a judgment in appeal. I do not, however, insist upon this view. I may observe that the draft Bill of the Criminal Code as amended--Section 427--expressly gives the power to the High Court to order the arrest of the accused person when an appeal is presented to it u/s 417, which corresponds with Section 272 of the current Code, except as to this power of arrest. The ruling, too, of the Calcutta Court referred to

above I.L.R Cal. 281 is cited as the marginal note to Section 427, and the proposed section is the same as para. 3 of Section 168 of Act IV of 1877, "The Presidency Magistrates" Act," by which the High Court may order the accused person to be arrested, committed to prison, or held to bail, when the Public Prosecutor appeals on behalf of the Local Government against an acquittal, dismissal, or discharge.

Oldfield, J.

3. I concur in the view taken by the learned Judges of the Calcutta High Court in *Queen v. Gobind Tewari and Ors.* ILR 1 Cal. 281.

4. The admission of an appeal revives the proceedings against the accused person who has been acquitted, and the Appellate Court, which has power, u/s 272 of the Criminal Procedure Code, to pass such judgment, sentence or order, as may be warranted by law, can, I apprehend, under the powers so conferred, compel the appearance of the accused person before it, and order his arrest.

Straight, J.

5. At the hearing of this reference I entertained some doubt as to the power of this Court, upon the admission of an appeal u/s 272 of the Criminal Procedure Code, to order the re-arrest of the person or persons who had been acquitted. I am not altogether clear upon this point now, despite the reasoning of the case ILR Cal. 281, quoted by Mr. Justice Oldfield, but I may refrain from coming to any determinate opinion as to that, seeing that under the proposed new Code of Criminal Procedure such difficulty cannot recur. Moreover, I think, that u/s 297, it having come to the notice of this Court that the accused were improperly discharged, an order may be issued for their arrest. Let the Magistrate, therefore, arrest the accused, and keep them in custody till the appeal is disposed of.