

Abu Hossein Mia Vs Emperor

Court: Calcutta High Court

Date of Decision: March 30, 1933

Citation: AIR 1934 Cal 256

Judgement

@JUDGMENTTAG-ORDER

1. The facts are set out in the judgment of the learned Sessions Judge and need not be repeated. The point that has been argued before us in this

case is that the proceedings had against the accused were without jurisdiction as the District Magistrate of Rangpur had no power to transfer the

case to the Sub-Divisional Magistrate of Gaibandha in the circumstances which happened. It appears that the District Magistrate's attention being

drawn to the contravention by the accused of the terms of the order of 22nd February 1932, which required him to stay in a particular village, the

District Magistrate made an order on the report of the Police Officer transferring the case against the accused to the Sudder Sub-Divisional

Magistrate for disposal. Subsequently the District Magistrate's attention was drawn to the fact that the offence having taken place within the

jurisdiction of the Sub-Divisional Magistrate of Gaibandha, it became apparent to the District Magistrate that the proper officer to try the case was

the Sub-Divisional Magistrate of Gaibandha and not the Sudder Sub-Divisional Magistrate and he thereupon made an order withdrawing the case

to his own file from the Sudder Sub-Divisional Magistrate and after such withdrawal, he transferred the case to the Sub-Divisional Magistrate of

Gaibandha.

2. It is argued that having regard to the terms of Section 51 of the Ordinance in question (2 of 1932) the District Magistrate as a Court had no

authority to transfer the case in the manner in which he did. On the other hand Mr. Khundkar has argued that the District Magistrate was not acting

as a Court in making the order he did, that he evidently laboured under a mistake in making the orders of transfer and that what he did was merely

as an Executive Officer and not as a Court. The District Magistrate has submitted an explanation in which he states that the orders made by him

were null and void as he did not act as a "Court." We are unable to accept the view urged upon us by the learned Deputy Legal Remembrancer

and by the District Magistrate and in our view it is clear that the District Magistrate in passing the order he did, namely transferring the case in the

first instance to the Sudder Sub-Divisional Magistrate, then withdrawing the case to his own file and thereafter transferring the case to the Sub-

Divisional Magistrate of Gaibandha did act as a Court, and if that is so his action in our view was in contravention of the terms of Section 51 of the

said Ordinance. It follows therefore that the Sub-Divisional Magistrate of Gaibandha had no jurisdiction whatsoever to try the case against the

accused.

3. In that view of the matter the conviction and sentence passed on the accused in this case must be set aside. (His Lordship then dismissed

another Revision No. 1105 on facts and concluded.) The result therefore is that while the Rule in Revision Case No. 1041 is made absolute the

Rule in Revision Case No. 1105 is discharged and the accused who is on bail must surrender to his bail bond and serve out the remainder of the

sentence passed in the ease out of which Revision Case No. 1105 has arisen. Let the re-cords in the two cases be sent down at once.