

REVISIONAL CRIMINAL.

Before Mr. Justice Tek Chand.

1928
Oct. 19.

UDHO RAM AND ANOTHER (ACCUSED) Petitioners
versus
THE CROWN, THROUGH BALMOKAND (COMPLAINANT)
Respondent.

Criminal Revision No. 1212 of 1928.

*Criminal Procedure Code, Act V of 1898, section 540—
Court witnesses—necessity of notifying parties beforehand—
Inspection of spot—procedure.*

Held, that under section 540, Criminal Procedure Code, a Magistrate is competent to summon any person as a Court witness at any stage of the proceedings, but he should (save under exceptional circumstances) inform the parties beforehand of the names of such witnesses, so as to afford them an opportunity of proper cross-examination.

Held also, that it is not proper for a Magistrate to hold a consultation as to the facts of the case with spectators present at the time of his inspection of the spot and to use the information so received for determining the guilt or innocence of the accused.

Application for revision of the order of Chaudhri Ghulam Mustafa, Magistrate, 1st Class, Jullundur, dated the 16th April, 1928, modifying that Khan Asadulla Khan, Honorary Magistrate, 2nd class, Mehtapur, district Jullundur, dated the 9th March, 1928, convicting the petitioners.

NIAZ MOHAMMAD, for Petitioners.

NEMO, for Respondent.

JUDGMENT.

TEK CHAND J.

TEK CHAND J.—The petitioners were convicted under section 448, Indian Penal Code, by the Honorary Magistrate, Mehtapur, and sentenced each to undergo simple imprisonment for three months and

to pay a fine of Rs. 100. On appeal the conviction has been upheld but the sentence of imprisonment reduced to the period already undergone. The sentence of fine has been allowed to stand. The petitioners have come up to this Court on the revision side.

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As the judgments of both the lower Courts were very unsatisfactory, I found it necessary to examine the evidence and after a careful consideration of the record, am of opinion that the conviction under section 448, Indian Penal Code, cannot stand. The complainant has made contradictory statements as to his own possession of the house in question. At one time he stated that he had sold the house in question to one Ram Chand, who was in possession. Later on he said that the sale to Ram Chand was fictitious and that he himself was in possession. The acts of trespass imputed to the petitioners are that they had tethered their cattle in the compound of the house and had taken drinking water from a well which is inside it. It was also suggested that they had locked the house from outside. The evidence on these points is contradictory and unreliable and does not establish any criminal offence against the petitioners. There has been previous civil litigation between the parties and there is no doubt that the complaint was of a vexatious and frivolous nature and had been lodged with a view to harass the petitioners. It was clearly an abuse of the process of Criminal Courts to entertain such a complaint and convict the petitioners thereon. At best the matter appears to be of a civil nature.

A curious feature of the case is that the Honorary Magistrate who tried the case, after having heard arguments on the 20th February, 1928, recorded an

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order that "in the interests of justice" it was necessary to inspect the spot, for which purpose he adjourned the case to the 22nd of February. On that date he went to the village and there, without previous notice to the complainant or the accused, recorded the evidence of four persons as Court witnesses. Under section 540, Criminal Procedure Code, it is competent to a Magistrate to summon any person as a Court witness at any stage of the proceedings, but in fairness to the parties and with a view to afford them an opportunity of proper cross-examination, he should (save under exceptional circumstances) inform them beforehand of the names of these witnesses. No such exceptional circumstances are shown to exist in this case. Indeed, there was no real necessity for the Magistrate to inspect the spot. Both parties had led their evidence, closed their cases and addressed arguments, and the Magistrate should have proceeded to judgment on the materials before him. He, however, thought fit to inspect the spot for no apparent reason, and without previous notice to the parties recorded the evidence of four witnesses. There is no doubt that the accused were handicapped in cross-examining these witnesses.

Further, the Magistrate has recorded a long note embodying the result of this inspection and in it he states that he made enquiries in the village from the neighbours of the parties with a view to ascertain the truth, and that later on he asked the spectators present at the time of the inspection to divide themselves into two batches, those who supported the case for the complainant being directed to go over to one side and those who thought that the accused was

in the right to go in the opposite direction. As a result of this direction most of the persons present went over to the side of the complainant. From this the Magistrate concluded that the case put forward by the complainant was true and that of the petitioners was false. It is hardly necessary to point out that a decision arrived at after such proceedings cannot be allowed to stand. The learned Magistrate is exercising second class powers and is expected to know that criminal cases must be decided on the evidence, properly led at the trial, and not as a result of a sort of "vote" taken from amongst the spectators who happened to be present at the time of his inspection of the spot.

I accept the petition for revision, set aside the conviction and acquit the petitioners. The fine, if paid, will be refunded.

A copy of this order must be sent to the Honorary Magistrate concerned for future guidance.

N. F. E.

Revision accepted.

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