

## CRIMINAL REVISION.

*Before Mr. Justice Heaton and Mr. Justice Shah.*

*In re* ABDUL RAHIMAN.\*

1917. *Criminal Procedure Code (Act V of 1898), section 344—Order of adjournment  
December 6. at the instance of a party—Liability to pay costs of the day.*

In granting an adjournment at the instance of a party the Magistrate can order him to pay the costs of the day to the opposite side, under section 344 of the Criminal Procedure Code, 1898, only where the circumstances are exceptional and where for some reason or another the ordinary method of conducting criminal cases must be departed from.

THIS was an application in revision from an order passed by Manilal Ajitrai, First Class Magistrate at Thana.

There were two cases filed against the applicant in the Court of the First Class Magistrate at Thana. In one of those cases, some of the witnesses for the prosecution were examined and the cases stood adjourned to the 31st July 1917. The applicant applied, on the 30th July, to the District Magistrate of Thana for a transfer of the cases from the Court of the First Class Magistrate at Thana, and obtained a rule. On the 31st July, the applicant alone appeared before the trying Magistrate and applied for adjournment in consequence of his application for transfer. The complainant also was present there with his two pleaders and witnesses. The trying Magistrate granted the adjournment but ordered the applicant to pay Rs. 30, the costs of the day, to the complainant.

The applicant applied to the High Court against the order as to costs.

*B. V. Desai*, for the applicant.—The only section under which a Magistrate can be said to have power to

\* Criminal Revision No. 344 of 1917.

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allow costs is section 344 of the Code of Criminal Procedure. The words "on such terms as it thinks fit" are no doubt general, but an order for costs must be made sparingly and only in extreme cases. The Criminal Procedure Code does not, unlike the Civil Procedure Code, provide for costs. In the present case, a rule in the transfer petition having been granted, and the Magistrate having known of it, he ought to have stayed proceedings. No doubt the cases of *Mathura Prasad v. Basant Lal*<sup>(1)</sup>, *Sew Prosad Poddar v. The Corporation of Calcutta*<sup>(2)</sup> and *Sunnasi Kudumhan v. Sivasubramania Kone*<sup>(3)</sup> decide that order of costs may be made; but the circumstances in those cases were quite different.

The other side did not appear.

HEATON, J. :—This is a case in which a Magistrate, when making an order for the adjournment of the case he was trying, made also an order that the accused should pay the day's costs of the complainant, which he assessed at Rs. 30. We are not prepared to say that this order was illegal. It will be seen from the case of *Mathura Prasad v. Basant Lal*<sup>(4)</sup>, that the Allahabad High Court has come to the conclusion that such an order is permitted by the terms of section 344 of the Code of Criminal Procedure. The same conclusion, we gather, has been reached by the High Courts of Calcutta and Madras. But the Criminal Procedure Code does not make special provision for costs in the course of a criminal trial, and one thing seems to me to be perfectly clear, and it is this: that if section 344 is to be regarded as justifying an order as to costs, it can only be where the circumstances are exceptional and where for some reason or another the ordinary everyday

<sup>(1)</sup> (1905) 28 All. 207.

<sup>(3)</sup> (1917) 18 Cr. L. J. 612.

<sup>(2)</sup> (1904) 9 C. W. N. 18.

<sup>(4)</sup> (1905) 28 All. 207.

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method of conducting criminal cases must be departed from. I say this because I feel sure that if our criminal law intended orders as to costs to be a normal part of our criminal proceedings, it would be clearly provided for. We should not be compelled to seek for authority for making such an order in a section like 344 and in such words as those in which that section is framed. Taking it, therefore, as I do take it, that our common everyday practice, which is in accordance with the intentions of the Code, does not contemplate an order as to costs; then one has to see, whether, when an order as to costs has been made, the circumstances are so peculiar as to justify the order. In this case they do not seem to me to be in any way peculiar. It is an ordinary case, one with which we are very familiar. A party applies for a transfer and then applies for an adjournment of the case. Such an adjournment is commonly granted, and in certain cases, as the law provides, must be granted.

I think, therefore, that the order as to costs in this case should be set aside. The amount, if paid, should be refunded.

I quite realise the inconvenience that arises when one party makes an application for a transfer or for an adjournment without giving previous notice to the other side. Personally I should be very pleased to see that the legal profession recognized the desirability of always giving such notice.

SHAH, J.—I agree.

*Order set aside.*

R. R.