

ALLAHABAD HIGH COURT

Har Dutt Panda

Vs

Emperor

(Tudball, J.)

10.02.1916

JUDGMENT

Tudball, J.

1. This is a reference by the learned Sessions Judge of Kumaun. The facts are simple. There were two contending parties or factions, between whom over a certain matter there was considerable ill-feeling. Certain events happened and finally action was taken by the Magistrate under Section 107 of the Code of Criminal Procedure, binding over both parties to keep the peace. The Magistrate put the two contending parties together in one case as accused persons, taking the evidence against them and for them, and finally binding over all of them to keep the peace for a certain period. The learned Sessions Judge has referred the case to this Court on the ground that the procedure of the Magistrate in trying the two contending parties together was either an irregularity or illegality which must have prejudiced each of them in their defence. In his explanation the Magistrate, and also the District Magistrate in his forwarding letter, are of the opinion that no revision can lie in the present matter as an appeal lies from the order of the Magistrate to the District Magistrate under Section 406. They also contend that the joint trial of the two parties was neither an irregularity nor an illegality, reliance being placed upon Clause (4) of Section 117 of the Code.

2. It is obvious that it is no more open in a proceeding of this description to put the two contending parties together as accused persons in one trial than it is to put the two contending parties in a riot case together at one trial on a charge of rioting. Clause (4) of Section 117 lays it down that where two or more persons have been associated together in the matter under enquiry, they may be dealt with in the same or separate enquiries as the Magistrate shall think just. It is impossible to say that the two contending parties have associated together. The members of one party no doubt may have associated together in the matter and so may the members of the other party, but the two parties are hostile parties and in no manner can be said to have associated together in the matter. It is obviously right and proper that each separate party should be separately called upon to show cause and should be treated separately. It is conceivable that if

this were not so, either party might be considerably prejudiced in its defence. In so far as the right of appeal is concerned if the learned Magistrates turn to Section 406, they will see that it gives no right whatsoever to an appeal in proceedings under Section 107, read with Section 118. It is only in cases where a person has been ordered by a Magistrate to give security for good behaviour under Sections 110 and 118 that appeals lie to the District Magistrate. In my opinion the learned Sessions Judge has rightly made this reference.

3. I set aside the order of the Magistrate in toto. If the Magistrate deems it necessary to take proceedings against these persons and bind them over to keep the peace, it will be open to him to institute fresh proceedings and to hear and decide the case according to law. The security bonds, if given, will all be set aside.