

PATNA HIGH COURT

Abdul Mian

Vs

The King

Criminal Revision No. 800 of 1949

(Ramaswami, J.)

18.08.1949

JUDGMENT

Ramaswami, J.

1. It is necessary to state the material facts giving rise to this rule. On 12.8.1948, at about noon one Karu Dusadh found six applicants slaughtering a bullock in an open field at a distance of about ten rasis from his house. He informed the S. I. of Police, who after investigation submitted charge sheet under Section 298A, Indian Penal Code. After taking cognizance, the Sub-divisional Mag. transferred the case to another first class Mag. who has convicted the applicants not under Section 295-A but under Section 298, Indian Penal Code.

2. The main argument is that since the prosecution has not been sanctioned by the local Govt., the conviction of the applicants is illegal. In my opinion, this argument is well-founded and must prevail. The lower appellate Ct. has observed that there is no defect in cognizance since the applicants have been ultimately convicted under Section 298, Indian Penal Code upon the same complaint. But it is not permissible to look at the ultimate result of the trial in order to examine whether the Mag. has taken legal cognizance of the case : see *Ravanappa v. Reddi v. Emperor*¹, and *Narain Singh v. Emperor*², In my opinion, the proceedings in the present case are wholly illegal from the start for want of sanction of the Provincial Govt. for the prosecution of the applicants In *Gokulchand Dwarkadas v. The King*³,) the Judicial Committee observed that sanction to prosecute constitutes a condition precedent to the institution of the prosecution; the giving of the sanction confers jurisdiction on the Ct. to try the case; and where there is no valid sanction there is a defect in the jurisdiction of the Ct. which can never be cured under Section 537, Criminal Procedure Code. Precisely the same opinion has been expressed by the FC in *Basdeo Agarwalla v. The King*⁴,

3. Upon these grounds, I would make this rule absolute and set aside the conviction and sentence imposed on all the applicants Rule made absolute.

Cases Referred.

1 AIR 1932 Mad 253: (33 Cr LJ 361)

2 AIR 1925 All 129 : (26 Cr LJ 448)

31948-1 MLJ 243: (AIR 1948 PC 82 : 49 Cr LJ 26)

41945 FLJ 45: (AIR 1945 FC 16 : 46 Cr LJ 510)