

Kali Charan And Anr. vs State Through Chandra Bahadur on 30 August, 1954

Equivalent citations: AIR 1955 ALLAHABAD 711

ORDER

Harish Chandra, J.

1. The learned Additional Sessions Judge of Bareilly set aside the conviction and the sentence passed upon the opposite party Chandra Bahadur on the ground that both the Bench Magistrates who delivered the judgment had not been present throughout the proceedings in that case. The judgment in the case was delivered by two members of the Bench, namely, Sri Mohan Lal and Srimati B. Goel. The former was present throughout the proceedings, but Srimati B. Goel appeared at a later stage. But when she joined the bench and replaced another member of the bench at the hearing of this case, the accused was asked whether he wanted a 'de novo' trial and he said that he did not. The provisions of Section 350 Criminal P. C., were thus substantially complied with, and I do not see how the further trial of the case by Sri Mohan Lal and Srimati B. Goel can be regarded as illegal.

The learned Additional Sessions Judge relied upon a case decided by this Court on 26-2-1952, Criminal Revn. No. 551 of 1951 -- 'Jai Ram v. The State', AIR 1953 All 137 (A). In that case, however, the effect and scope of Section 350A alone seem to have been considered. There was a number of changes in the constitution of the bench in that case and almost on every occasion the accused were asked whether they wanted a 'de novo' trial and they said that they did not. But the effect of the statement made by the accused persons on each occasion on which the constitution of the bench was changed that they did not want a 'de novo' trial does not seem to have been considered.

There is another case of this Court -- 'Har Narain v. Emperor', AIR 1943 All 20 (B), which was decided by Allsop J. He saw no reason why Section 350 should not apply when the personnel of a bench, is changed during the trial. If at the time when such change occurred the accused did not demand that the witnesses or any of them be resummoned and reheard and the trial proceeded, it could not be regarded as illegal. I am, therefore, of the view that the learned Sessions Judge did not correctly set aside the conviction and the sentence passed upon the applicant merely because there had been a change in the constitution of the bench during the trial of the case.

2. I, accordingly, set aside the order of the learned Additional Sessions Judge dated 9-4-1952, and direct that the appeal be reheard on the merits and decided according to law.