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HEADING OF JUDGMENT OF APPELLATE COURT.

COURT OF SESSION APPELLATE JURISDICTION .

See P. 2/11

The 19.

Criminal Appeal no 148 of 1943.

Appeal from the order of Khen Bahadur N. Huda S. D. Magistrate of Samastipur , dated 7th October 1942.

Gopi kant Jha accused----Appellant.
versus.

King emperor -----Respondent.

Fleader for ~~Appellant~~ -----appellant ; - B. Chatterbuj N. Choudhry

Fleader for Respondent ; - B. Barode Cheren Advocate P. P.

J u d g m e n t

The appellant in this case Gopikant Jha is the late Head Master of the Rosera H. E. School. He has been sentenced under section 56(4) of the Defence of India Rules to R. I. for two years and to pay a fine of Rs 250/- in default to undergo R. I. for 6 months. The case against him in brief is that on 13th , 14th and 15th of August 1942 he convened Congress meetings at the Rosera School at the Rosera School in violation of the order of the District Magistrate under Rule 56(1) of the Defence of India Rules which was duly promulgated in that area , and that he also took an active part in Congress processions and activities at Rosera . It appears unnecessary to enter into the merits of the case as there is a legal defect in the trial , in as much as the general order of the District Magistrate constituting Courts of Special Magistrate for the trial of particular offences was not issued until 4. 10. 42, whereas the learned Magistrate in this case

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case took up the hearing on 28. 9. 42 and tried the case as a Special Magistrate and passed his orders in that capacity. The conviction and sentence are therefore liable to be set aside. The only question however is as to whether the case should be remanded for retrial. The accused has already suffered R. I. for about 9 months, and in my opinion this sentence is in any case sufficient to meet the ends of justice, especially in consideration of the previous good character held by him.

The appeal is therefore allowed and the conviction and sentence of the lower Court are set aside.

Sd/- J. I Blackburn.
Sessions Judge
4. 8. 1943

Dictated and corrected by me.

Sd/- J. I Blackburn.
Sessions Judge.
4. 8. 1943.

Typed by
R. P. Verma
Typist

Compared by
C. Clerk 9/8/43.

Shafiq
9.8.43

In

The court of the Sessions Judge,
Darbhanga.

Criminal Appeal no. of 1943.

Gopikant Jha son of B. Grihinsadan Jha resident of
village Kurson P. S. Bahera District Darbhanga.

(Accused). Appellant in jail.

Versus.

King Emperor Respondent.

The aforesaid appellant being aggrieved and dissatisfied with the order of conviction and sentence passed by Khan Bahadur N. Hoda, Sub Divisional Officer, Semastipur by his judgment dated 7-10-42 convicting this appellant under section 56(4) of D.I. Rules and sentencing him to undergo R.I. for 2 years and to pay a fine of Rs. 250/- in default to undergo further R.I. for 6 months begs to prefer this memo of appeal on the following amongst other

Grounds :-

(a). For that the judgment of the learned lower court is based on surmises and conjectures.

(b). For that the judgment passed by the learned lower court is against the weight of evidence and actual facts on the record.

(c). For that the learned lower court has misappreciated the evidence and has taken a distorted view of the whole thing.

(d). For that the learned lower court should have allowed an opportunity to this appellant to cross examine the Prosecution witnesses and his failure to do so violates the whole trial.

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(e). For that when the lawyer of this appellant was not ready to cross examine all at once, the learned Magistrate should have given some time to the lawyer for cross examination and the endorsement ~~is~~ declined "is against state of things.

(f). For that the learned lower court should have allowed this appellant's lawyer to cross-examine the P.Ws. under section 257 Cr.P.C. and its failure to do so is not ~~only~~ irregular but illegal.

(g). For that the learned lower court has misconstrued the whole case.

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(h). For that the learned lower court has failed to take into account the letters written by this appellant to the S.D.O. Semastipur in capacity of President of School a copy of which was forwarded to S.I. of Police Rosera and his endorsement thereon.

(i). For that the learned lower court has committed grave error in inducting matters which appertain to his personal knowledge.

(k). For that the learned lower court has misapplied itself in dealing with the defence evidence and the reasons assigned by it are neither sound nor cogent.

(l). For that the learned court below should have accepted the defence version and should have acquitted this appellant.

(m). For that the learned lower court should not have placed any reliance on the P.Ws. who ~~are~~ were all interested and inter connected.

(n). For that the judgment is otherwise bad in law.

(o). For that the charges framed is defective and illegal.

(p). For that the sentence is too severe.

on the grounds set forth above and also on others that may be urged at the time of hearing it is most respectfully prayed that your honour would be graciously pleased to

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to admit the appeal, call for the records of the case and after hearing the parties acquit this appellant and it is also prayed that this appellant be released on bail and realisation of fine be stayed pending disposal of this appeal and for this the appellant shall ever pray

T/by

S.K. Jha.

D/-19.6.43.

