

(1921) 07 BOM CK 0017
In the Bombay High Court
Case No : Criminal Reference No. 23 of 1921

Emperor	Vs	APPELLANT
Rustomji Mancherji		RESPONDENT

Date of Decision : 28-07-1921

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 342
Penal Code, 1860 (IPC) — Section 290

Citation : AIR 1921 Bom 370 : (1921) 23 BOMLR 984

Hon'ble Judges : Shah, J; Norman Macleod, J

Bench : Division Bench

Judgement

Norman Macleod, Kt., C.J.—The accused is charged with having committed a public nuisance in that he worked a Hour mill in a residential neighbourhood. He was charged u/s 290, Indian Penal Code, and the proceedings have been referred to this Court by the Sessions Judge on account of the conduct of the Magistrate in that he tried the case summarily although an applies" was made by the accused that the case should not be tried in a summary manner. The result has been that although the case lasted for a considerable time, there is no record of the trial from which we can form an opinion that the conviction was right. In the end the accused has been fined Rs. 25. But the result of the conviction is that he is unable to carry on his business and work U13 Hour mill, without rendering himself liable to further conviction.

2. That no doubt is a very serious matter. The question whether this flour mill is a public nuisance is one which ought to be properly tried.

3. There is another objection that the statement of the accused was not taken u/s 342, Criminal Procedure Code. I am aware, as the authorities stand at present, that is a fatal objection.

4. But my own mind is perfectly open on the point, and" considering the provisions of the Criminal Procedure Code with regard to proceedings in summons cases, and the enormous addition to the Magistrates" work which is

necessitated by their having to record the statements of the, accused u/s 342, Criminal Procedure . Code, in every case, I shall welcome any opportunity which might occur for the question being reconsidered.

5. The conviction and sentence are set aside and the fine, if Paid to be refunded.

Shah, J.

6. I agree that the conviction and sentence should be set aside. The procedure adopted was not suited to the requirements of the case: and I think that the learned Magistrate should not have tried it summarily. As regards the effect of not examining the accused u/s 342, Criminal Procedure Code, in a summons-case, speaking for myself, I see no reason to doubt the correctness of the view which Crump J. and I have taken in the case of Emperor v. Fernandez.I.L.R (1920) Bom. 672 : 22 Bom L.R. 1010.