

In Re: Somappa

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Court : Andhra Pradesh

Decided On : Jul-06-1956

Reported in : 1957CriLJ1209

Judge : Bhimasankaram, J.

Appellant : In Re: Somappa

Judgement :

ORDER

Bhimasankaram, J.

1. The learned Sub-Magistrate, Aluru, has, in this case, passed the following order.-

The advocate is informed that an amount of Rs. 300, has to be deposited in this office towards foatta to be payable at Sessions Court, Kurnool, at the time of trial in P. R. G. No. 15 of 1955 (S.C. No. 8 of 1956) within 7 days of the receipt of this memo. The D. Ws. will not be bound over for their appearance before Sessions Court. Kurnool until the amount is deposited.

This must be treated as specially urgent.

2. Mr. Ramachandar Rao for the accused-petitioner argues that this order is contrary to the terms of the Criminal Procedure Code. He relies on Atchutha Rao

v. Emperor 1936 Mad WN 1093 (A), where it was held that an order of a Magistrate that

'except as regards those residents within six miles of the Court house no summons will issue to the others unless the licensed deposited a sum Of Rs. 500 before that very evening was wrong and contrary to the provisions of Section 257, Criminal Procedure Code'.

3. It was laid down therein that the Magistrate was bound to deal with each witness separately and to decide whether his expenses were to be deposited before he was summoned and that he was clearly in error in ordering a lump sum-to be deposited. Under the Code as amended recently, Section 207A Sub-section (11), proviso 2, runs in these terms:

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material and if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other Proper expenses.

4. This proviso clearly contemplates, in my opinion, the necessity for a consideration by the Magistrate as to whether any particular witness is being cited for the purpose of vexation or delay, or of defeating the ends of justice and a duty is cast upon him to satisfy himself in such a case that there are reasonable grounds for holding that the evidence of such a witness is material and in the absence of such satisfaction only he may refuse to summon the witness or alternatively direct the deposit of the necessary expenses. He cannot pass a general order directing the accused to deposit the expenses that may be necessary for summoning all the witnesses he wants to summon.

5. It has been brought to my notice that such orders are not infrequently passed in this district. I therefore, wish to draw the attention of the subordinate Magistracy to

the necessity for strictly complying with the provisions of Section 207-A, Criminal procedure Code.

6. In the result, the order of the learned Sub-Magistrate is set aside.

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