

Surja Vs. the State

Surja Vs. the State

SooperKanoon Citation : sooperkanoon.com/753113

Court : Rajasthan

Decided On : Jun-13-1950

Reported in : AIR1951Raj68

Judge : Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 397; Indian Penal Code (IPC) - Sections 302 and 406

Appeal No. : Criminal Ref. No. 141 of 1950

Appellant : Surja

Respondent : The State

Advocate for Def. : Sumer Dan, Asst. Govt. Adv.

Judgement :

ORDER

Gupta, J.

1. This is a reference made by the Ses J., Ganganagar who has recommended that the order of the Sub-divisional Mag, Ganganagar, contained in his judgment dated the 25-2-1950, by which he has ordered that the sentence passed on him under Section 406, Penal Code, be made to run concurrently with the sentence of imprisonment previously passed against the convict in a separate trial for an

offence under Section 302, Penal Code, be set aside.

2. It appears that one Surja had been convicted of an offence under Section 302, Penal Code & sentenced to life imprisonment. Subsequently, he was charged & tried for an offence under & 406 & convicted for the same. The learned. Sub-divisional Mag who sentenced Surja, to one year's rigorous imprisonment ordered that the sentence be made to run concurrently with the sentence passed on him under Section 302, penal Code. Surja, thereupon, went up in appeal to the Ses J., Ganganagar. During the course of the hearing of the appeal, it was discovered by the learned Ses J. that the Mag had made the sentence to run concurrently with a sentence passed on him previously in a separate trial for an offence under Section 302, Penal Code. He thought the order to be illegal & made the present reference. The learned Asst Govt Advocate opposes the reference. He urges that the Mag was empowered, to pass the order he did, under Section 397, Cr. P. C, Sub-section (1), the last & relevant words of which are:

'Unless the Ct directs that the subsequent sentence shall run concurrently with such previous sentence.'

3. I agree with the learned Asst Govt Advocate. The learned Sub-divisional Mag was competent under the above quoted provision of Section 397, Cr. P. C. to pass the order in question & make the subsequent sentence passed by him to run concurrently with the previous sentence passed against Surjaram though in a separate trial. In this view, I am supported by a decision reported in 'Mahadeo v. Emperor', AIR (13) 1926 Nag, 426: (27 Cr LJ 807). The recommendation of the learned Ses J. cannot be accepted & the reference is rejected. It appears that the attention of the learned Ses J. was not drawn to the above provision made at the time of amendment of the Cr. P. C.

4. The learned Asst Govt Advocate has further pointed out that the learned Ses J. had made the reference without disposing of the appeal of Surjaram who was a long-term prisoner in the Central Jail, Bikaner. He has pointed out that the learned Ses J. was wrong in making this reference without disposing of the appeal. He has, therefore, requested that the records be returned to the learned Ses J. for disposal of the appeal. There is much force in what the learned Asst Govt

Advocate has said. It was only after the dismissal of Surjaram's appeal & maintaining the sentence imposed on him by the trial Ct that the necessity for a reference of the kind could have arisen. There would have been no necessity of this reference in case Surjaram's appeal were accepted. The records are returned to the learned Ses J. for disposal of the appeal according to law.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com