

**In Re: Natesa Mudaliar**

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**SooperKanoon Citation :** [sooperkanoon.com/774588](http://sooperkanoon.com/774588)

**Court :** Chennai

**Decided On :** Jan-17-1945

**Reported in :** AIR1945Mad330; (1945)1MLJ179

**Appellant :** In Re: Natesa Mudaliar

**Judgement :**

ORDER

**Mockett, J.**

1. The petitioner has been convicted under Sections 457 and 380 of the Indian Penal Code. Section 457 of the Indian, Penal Code concerns lurking house-trespass which is denned in Section 443. It is house-trespass after taking precautions to conceal the house-trespass from the person who has a right to exclude the trespasser from the building. Section 380 of the Indian Penal Code concerns theft in a building. It should be clear that it is quite possible to commit the offence of lurking house-trespass without stealing anything at all just as it is possible to commit theft in a building without committing lurking house-trespass. The offences are therefore quite distinct. A Bench of this Court has discussed this topic in connection with Sections 147 and 323 of the Indian Penal Code. In the case reported in In re Ponniah Lopes, Bardswell, J., observes:

There has been a general agreement amongst all the High Courts except that of Lahore that if a person is convicted of rioting and of a substantive offence of hurt

of some kind he can be awarded separate sentences and this is what was held by this Bench in a case reported as Sothavalan v. Rama Kone.

With all respect to the learned Judges in Makhru Dusadh v. King-Emperor, I am unable to follow their ruling that a person convicted of house-breaking followed immediately by theft could only be punished under Section 457 of the Indian Penal Code. It must be remembered that Section 35 of the Code of Criminal Procedure was amended in 1923. So far as this High Court is concerned I am satisfied that there is no prohibition of separate sentences being passed in a case such as is now before me. I do not think, however, that such a course is desirable when one sentence can be made to run concurrently. In this case, I am quite satisfied that the learned Judge intended to impose a sentence of eight months' rigorous imprisonment. He has actually sentenced the accused-petitioner to four months' rigorous imprisonment on each count, the sentences to run consecutively. Under the circumstances, I shall not interfere.

2. The petition is dismissed.

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