

In Re: Athi Ambalagaran and ors.

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Court : Chennai

Decided On : Feb-12-1932

Reported in : 137Ind.Cas.761; (1932)62MLJ717

Appellant : In Re: Athi Ambalagaran and ors.

Judgement :

Waller, J.

1. Criminal Appeal No. 570 of 1931 is an appeal by seven persons against an order of the Sessions Judge, West Tanjore, directing their prosecution for perjury. They were to be prosecuted for having made contradictory statements before himself and before the Committing Magistrate. As a measure of precaution the Committing Magistrate also directed their prosecution. Seven appeals were presented against his order to the Sub-divisional Magistrate, Pattukottai, and they have been called up to this Court for consideration with the other appeal

2. The main contention is that both of the Courts have acted without jurisdiction. No Court, it is argued, can direct a prosecution for perjury committed in another Court. In other words, such a prosecution as this--for making contradictory statements--can be ordered only when the statements have been made in the same Court or by a Court to which appeals lie from both of the Courts in which the contradictory statements were made. It follows that in a case like this, which is precisely the case stated in the illustration to Section 236, Criminal Procedure

Code, although the law contemplates the possibility of a prosecution, a prosecution is impossible; for the statements have been made in different Courts and appeals from these Courts lie not to one and the same Court but to two different Courts.

3. The question has arisen before and been answered in different ways. It arose in *Rami Reddi v. The Public Prosecutor of Kurnoop* : AIR1915 Mad508 and the answer was apparently that each of the Courts should sanction, which negatives part of Dr. John's contention. The statements in question were made one before a Sub-Magistrate under Section 164, Criminal Procedure Code, and the other in the Sessions Court. In *Narayanan Nadan v. Palaniappa Nadan* (1917) M.W.N.141 a case exactly parallel to this, it was held that the Sessions Judge could grant sanction in regard to both statements the one made to the Committing Magistrate having been 'brought to the notice¹ of the Sessions Court in relation to proceedings' before it. In *In re Marwadi Ganesh Mull* : (1931)61MLJ914 Jackson, J., followed this decision, but added the observation that by way of abundant caution in such cases it would be well to have complaints from both Courts. In another judgment, delivered on the same day, he went further and said that the Committing Magistrate also 'must complain'. And in another unreported case, Criminal Appeal No. 281 of 1931, *Lakshmana Rao, J.*, followed the decision in *Narayanan Nadan v. Palaniappa Nadan* (1917) M.W.N.141.

4. On account of these somewhat conflicting pronouncements, the appeals were sent to us in order that the question might be settled by a Bench. Our answer must be that it was correctly decided in *Narayanan Nadan v. Palaniappa Nadan*.

5. Section 476, Criminal Procedure Code, is framed in very wide terms and allows a Court to direct an enquiry to be made into certain offences, including perjury, which appear to have been committed in or in relation to a proceeding in that Court. The wording seems to us to cover exactly a case like this. The perjury was committed either in the Sessions Court or at the preliminary enquiry which preceded and led up to the trial in the Sessions Court. We find it impossible to say that a statement made by a witness at the preliminary inquiry has not been made, in relation to the subsequent proceedings in the Sessions Court. The Sessions

Judge had therefore jurisdiction to direct the prosecution of the appellants before us for contradictory statements made before himself and before the Committing Magistrate. We do not agree with Jackson, J., that it was either advisable or necessary for the Committing Magistrate to direct their prosecution also. The appellants' first objection therefore fails and we must hear Dr. John on the merits.

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