

In Re: Dakshinamurthi

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Court : Chennai

Decided On : Jun-30-1942

Reported in : (1942)2MLJ146

Appellant : In Re: Dakshinamurthi

Judgement :

ORDER

Horwill, J.

1. This petition was admitted because the learned Magistrates did not comply with the requirements of Section 370 (1) of the Code of Criminal Procedure. They should have given a brief statement of the reasons for the conviction. They merely said that they believed the prosecution witnesses without noting what the prosecution witnesses said and without any reference to the defence evidence. A brief statement of the reasons for conviction would necessitate a reference to what the prosecution witnesses had said, so that it could be shown that that evidence if believed would establish the offence with which the accused had been charged. If there had been no defence witnesses, it would then have been sufficient if the Magistrates had said that they believed the prosecution witnesses; but when there is defence evidence which is inconsistent with the prosecution story, some brief reasons should also be given why the defence evidence should be discredited.

2. As this petition was admitted I had either to send the case back again for the Magistrates to give a brief statement of reasons as required by Section 370 (1) or to read through the evidence myself and decide whether the conviction was justified by the evidence. The vacation has intervened since this petition was admitted, and it is perhaps unlikely that after more than four months have expired the Magistrates would remember very much about what the witnesses said. I have therefore been compelled to perform a duty which the Magistrates themselves should have performed. When the records were called for from the Presidency Magistrates, they could themselves have (submitted a report under Section 441 of the Code of Criminal Procedure. If that had been done and the report had remedied the defect in the original order, it would not have been necessary for anything further to have been done by this Court) as was the case in *In re, Dervish Hussain* (1922) 44 M.L.J. 84 : I.L.R. 46 Mad. 253. That unfortunately was not done.

3. I have been through the evidence and I see no reason why the evidence of P.Ws. 2 and 3 should not be believed. It is usually not difficult to get a friend or two to support one when one is in difficulty. The two defence witnesses were interested in the accused, and I think that interest a sufficient reason for not accepting their evidence in rebuttal of the evidence of the prosecution witnesses.

4. Had the order of the Magistrates been in accordance with the requirements of Section 370(1) of the Code of Criminal Procedure, I in all probability would not have interfered with the sentence; but after going through all the evidence, I feel the sentence is excessive; for it is almost the maximum sentence that could be imposed. Section 75 of the City Police Act provides for a maximum punishment of one month's R.I. or a fine of Rs. 50 or both. The punishment imposed was one month's R.I. and a fine of Rs. 25. That seems to me to be a very severe sentence for conduct that was not very disorderly. It is true that four years ago the accused was fined one rupee for a similar offence; but that is no sufficient reason for the imposing of such a heavy sentence as has in this case been imposed. The accused was eight days in jail before he was released on bail by this Court, and I feel that that is ample punishment for the offence committed by him. The imprisonment is therefore reduced to the term already undergone and the order for

payment of fine set aside. The order under Section 106 of the Code of Criminal Procedure is unobjectionable in the circumstances and will stand.

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