

In Re: Krishna Baipadithaya

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Court : Chennai

Decided On : Oct-25-1909

Reported in : (1910)20MLJ132

Appellant : In Re: Krishna Baipadithaya

Judgement :

1. On the morning of the 22nd March 1908, the house of the accused was burnt down. At 4. p.m. that day Prosecution Witness No. 4 reported to the Potel-Defence Witness No. 9-that Prosecution Witness No. 1 had set fire to the house. The Potel reported this to the Police in Exhibit D and asked them to come and investigate. Prosecution Witness No. 10, the Constable who received the report, went to the scene on the 23rd March, and after questioning the accused, his wife and children, arrested Prosecution Witness No. 1. What the accused said was embodied in the Constable's Case Diary: Exhibit F. It was also made the subject of a separate statement, Exhibit E, which the accused signed. Prosecution Witness No. 1 was tried for arson but was discharged. Proceedings were then taken against the accused, and the charge under Section 211, I.P.C. on which he has been tried and convicted is that with intent to cause injury to P. W. No. 1 he instituted criminal proceedings before the Constable, Prosecution Witness No. 10, charging Prosecution Witness No. 1, with having set fire to his house knowing that there was no just or lawful ground for his action. Objection is taken that the statement made by the accused to the Constable was a statement made under Section 162, Cr.P.C., and that such a statement is not a complaint or charge and cannot be

made the basis of a prosecution for an offence under Section 211, I.P.C.; that the statement made by the accused to the Constable though reduced to writing and signed by him, was a statement made under Section 162, Cr.P.C., and not under Section 154, Cr.P.C. There can be no doubt on the facts of this case. In *Chinna Ramanna Gowd v. Emperor* I.L.R. (1908) M 1506 it was held that a statement made under Section 162 Cr.P.C, cannot be made the basis of a prosecution for an offence under Section 211, I.P.C. When the accused made his statement the law had already been set in motion against Prosecution Witness No. 1, and the proceedings cannot be said to have been instituted by the statement made by the accused to the Constable. We set aside the conviction and acquit the accused. His bail bond is discharged.

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