

In Re: Rangaswami Goundan

In Re: Rangaswami Goundan

SooperKanoon Citation : sooperkanoon.com/776360

Court : Chennai

Decided On : Jul-20-1928

Reported in : 113Ind.Cas.545; (1928)55MLJ503

Appellant : In Re: Rangaswami Goundan

Judgement :

ORDER

Curgenven, J.

1. The petitioner who prefers this Criminal Revision Petition has been convicted under Section 216, Indian Penal Code, for harbouring a person for whose apprehension orders had been issued, knowing of those orders and intending to prevent his being apprehended. The person in question, Marappa Goundan, was himself convicted under Section 215, Indian Penal Code, but was acquitted on appeal. The main argument now addressed to me is that when the person harboured has been found to be not guilty, an essential ingredient of the offence under Section 216 is lacking and accordingly that the conviction is bad. In order to support this argument, a number of cases relating to other sections have been cited. I do not consider that it is necessary for me to examine them in detail, as it will be found in each instance that it was held to be implicit if not expressed in the terms of the section dealt with that the person in respect of whom the offence was committed was himself an offender, i.e., found guilty of an offence. For instance, in *Empress of India v. Abdul Kadir* I.L.R. (1980)A. 279 which dealt with Section 201,

Indian Penal Code, it was considered not to be sufficient to show that there was reason to believe that an offence has been committed but that it must be shown that an offence had actually been committed, and that this is so, is, I think, clear from the opening words of that section. The same remark applies *mutatis mutandis* to the cases of *The Queen v. Joynarain Patro* (1873) 20 W.R. 66 dealing with Section 203, *Queen-Empress v. Fateh Singh* I.L.R. (1889) A. 432 dealing with Section 212, *Girish Myte v. Queen-Empress* I.L.R. (1896) C. 420 and *Emperor v. Sanadal Lallubhai* I.L.R. (1913) B. 658 dealing with Section 213 and *Queen-Empress v. Saminatha* I.L.R. (1890) M. 400 : 1890 1 M.L.J. 163 dealing with Section 214. In the case of each of these sections, the nature of the offence, rightly construed, requires that the person in respect of whom it was committed had himself committed an offence. The same principle holds good, of course, with Section 214, Indian Penal Code, which renders punishable the screening of a person from legal punishment for any offence. It is clear that no person can be screened from legal punishment for an offence if he has not rendered himself liable to it by his conduct. I can, however, discover no such necessary component in Section 216. It is enough in my view to show that against the person harboured orders of apprehension had issued for an offence, that is to say, for an offence alleged against him. That is the meaning to attach to the word 'offence' occurring in the section is, I think, clear from the explanation of the word, as applied to acts committed outside British India, given in the sixth paragraph of the section. The purpose of the provision appears to me to penalise acts designed to obstruct or defeat the course of justice which requires that suspected persons should be arrested whether they may prove eventually to be guilty or innocent, and that it is not necessary to show that the offence in respect of which orders of apprehension were issued was actually committed. I am unable, therefore, to accept this as a ground for revision.

2. It is then said that the Trial Magistrate, although he conceded to the accused his demand for a *de novo* trial, acted upon some of the materials recorded in the earlier proceedings. I do not think it necessary to decide here whether the effect of a *de novo* trial is to wipe out all previous proceedings, because, with one very small exception, it is clear that the conviction is based exclusively upon the evidence recorded at the new trial. That exception consists in a remark by the

Court that the accused had not stated before the previous Magistrate that he was not present in the village on the day in question. I do not think that that consideration can have had any material effect in securing his conviction, nor do I find any substance in the objection that in putting his first question to the accused the Sub-divisional Magistrate said 'Do you wish to state anything more', because, in point of fact, the accused seems not to have been misled into supposing that his earlier statement would be taken into consideration, but proceeded to repeat in substance what he had then stated.

3. It is then said that the appellate judgment deals inadequately with the defence evidence. It is true that it has dismissed it with some brevity, but the evidence has been very fully discussed by the Sub-divisional Magistrate and I think it received as much consideration from the learned Sessions Judge as its importance merited.

4. Although I hold that the acquittal of the person harboured cannot affect the legality of the conviction, I think it may well be taken into consideration in awarding sentence. The petitioner has been sentenced to rigorous imprisonment for 6 months and it appears that the circumstance that the person harboured had received a sentence of two years was weighed in awarding that sentence. Since the latter has subsequently been acquitted, it will, I think, meet the ends of justice if the term of imprisonment awarded be limited to the period already undergone. To this extent, I allow this Criminal Revision Petition.