

In Re: Ediga Thimmiah and ors.

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Court : Chennai

Decided On : Apr-10-1924

Reported in : (1924)47MLJ355

Appellant : In Re: Ediga Thimmiah and ors.

Judgement :

ORDER

Spencer, J.

1. This Criminal Revision Case has been admitted on the question of the validity of the appellate Court's order to pay the complainant's Court-fees under Section 31 of the Court-fees Act.
2. At the hearing an objection has been raised that the appellate Court's judgment is defective under Section 367 of the Code of Criminal Procedure because the Joint Magistrate did not discuss the bearing of the evidence of each prosecution witness on the guilt of each accused. This is not one of the grounds stated in the revision petition and I do not find any substance in it.
3. The order to collect Court-fees from the accused passed. by the appellate Court is not an enhancement of the sentence under the authority of Vemuri Seshanna I.L.R. (1902) M 421. The case in Queen-Empress v. Thangavelu Chetti I.L.R. (1898) M 153 was decided by a single Judge in September, 1898. The head note to the report indicates that it was a decision under the Code of 1882. A which had

not the same provision under Section 423(d) for passing incidental or consequential orders in appeal that was introduced by Act V of 1898. I hold that the making of an order under Section 31 of the Court-fees Act does not ordinarily amount to an enhancement of sentence but may be made as an incidental order to bring the judgment into conformity with the law. Section 31 of the Court-fees Act provides that all fees ordered to be repaid under this section shall be recoverable 'as if they were fines,' but does not thereby make them part of the sentence. In *Queen-Empress v. Thangavelu Chetti* I.L.R. (1898) M 153 the Assistant Magistrate who tried the case made an order for a part of the Court-fees claimed by the complainant to be repaid out of the fine collected as sentence and it was for this reason that Justice Moore was impelled to treat the Assistant Magistrate's order to pay the fee as an integral part of the sentence, and to regard the Deputy Magistrate's order to pay an increased amount as an enhancement of the sentence. I do not find any such objection to exist in the present case to the Joint Magistrate's order.

4. The Criminal Revision Petition is therefore dismissed.

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