

In Re: Muthiah Pillai

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Court : Chennai

Decided On : Sep-27-1906

Reported in : (1906)16MLJ529

Appellant : In Re: Muthiah Pillai

Judgement :

ORDER

Benson, J.

1. The Public Prosecutor argues that Section 215 of the Code of Criminal Procedure indicates that the High Court ought not to interfere with a Sessions Judge's order directing a commitment to be made, except on a point of law. That section refers only to a commitment actually made and there is the direct authority of the case of Pirthi Chand Lal v. Sampatia (1903) 7 C.W.N.327 against the contention of the Public Prosecutor; and the observations in Queen Empress v. Balasinnatampi I.L.R(1891) M. 338 and in Hari Dass Sanyal v. Saritulla I.L.R(1888) C. 621 support the review in Pirthi Chand Lal v. Sampatia (1903) C.W.N. 327.

2. I have no doubt that it is open to the High Court to consider whether the Sessions Judge has or has not exercised a proper judicial discretion under Section 436 of the Criminal Procedure Code in setting aside a Magistrate's order of discharge, and that for this purpose the High Court may consider the facts as well

as the questions of law involved. Though the High Court has this power, I need hardly say that it will only exercise it where it is manifest that the Sessions Judge's order is improper, as for instance, where there is no evidence to prove the offence charged or where it is clear that the Court would not act on the evidence.

3. In the present case the facts have been fully argued before me by Mr. Cowdell for the petitioner and by the Public Prosecutor, and I find that there is the direct evidence of three witnesses, viz., by the complainant, the 5th and 7th prosecution witnesses that Exhibit A is a forgery and that there are circumstances referred to by the Sessions Judge which may be considered to support the charge. On the other hand, there are several considerations referred to by the Magistrate who held the preliminary enquiry which make it impossible that the charge is true. But the ultimate question is whether the direct evidence of the three prosecution witnesses who speak directly to the alleged forgery is true or false.

4. The offence alleged being a grave one, and as such, triable under the scheme of the Code only by a Court of Sessions, it is desirable that the truth of the evidence of these witnesses, and the value to be attached to the counter considerations urged by the Magistrate should be tested and weighed by a superior Court by the aid of assessors and with the advantage of hearing the witnesses give their evidence in the presence of the Court.

5. For these reasons, I must decline to set aside the order of the Sessions Judge.

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