

In Re: Abdul Kareem

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Court : Chennai

Decided On : Apr-01-1947

Reported in : (1947)2MLJ117

Appellant : In Re: Abdul Kareem

Judgement :

ORDER

Yahya Ali, J

1. This is a reference by the District Magistrate of Vizagapatam made in the following circumstances. One Abdul Kareem, a clerk in the Fleet Mail Office, Vizagapatam, was charged with having committed theft under Section 381 of the Indian Penal Code. He was tried in C.C. No. 1895 of 1945 on the file of the Stationary Sub-Magistrate, Vizagapatam, and convicted of that offence. The Magistrate was of the opinion that since the accused was a young man without any previous conviction, it would be proper to release him under Section 562(1)(a) of the Code of Criminal Procedure instead of awarding him a sentence. Since he was not empowered under that section he forwarded the accused under Section 380 of the Code of Criminal Procedure to the Additional First Class Magistrate, Vizagapatam, for taking appropriate action, if he considered it fit, under Section 562 of the Code of Criminal Procedure. Before the Additional First Class Magistrate could dispose of the matter on the reference under Section 380, Abdul Kareem preferred an appeal against his conviction by the Stationary Sub-Magistrate. The appeal was heard by the Sub-Divisional Magistrate, Vizagapatam,

who dismissed it in limine on the ground that it was premature and that there was no provision of law under which such an appeal could be filed'. The learned Sub-Divisional Magistrate took the view that without a sentence a conviction is not complete and since no sentence had been passed in the case an appeal against a mere conviction not accompanied by a sentence is not maintainable. In this view he did not enter on the merits of the case.

2. The District Magistrate in his reference requests to be informed

whether an appeal lies against the preliminary conviction by a Magistrate who is not competent to act under Section 562(1)(a) of the Code of Criminal Procedure and who has, therefore, forwarded the case to a Magistrate competent to do so.

His own opinion is that no appeal lay at all before the Sub-Divisional Magistrate at the stage at which it was filed and that the conviction by the Stationary Sub-Magistrate was not a conviction in law as the case has now been taken on file by the Additional First Class Magistrate who, on his appreciation of the evidence may very well discharge or acquit the accused. He considers that the proper course for the accused was to await the decision of the Additional First Class Magistrate and if he was convicted to prefer an appeal to the Court of Session.

3. The point raised in the reference is one of first impressions, and is not altogether free from difficulty. Having bestowed attention to all the aspects of the matter, however, I have come to the conclusion that the appeal preferred by Abdul Kareem to the Sub-Divisional Magistrate against the conviction in C.C. No. 1895 of 1945 was not incompetent. As the District Magistrate has himself pointed out a right of appeal is given in the Code of Criminal Procedure against a conviction under Section 381 of the Indian Penal Code. I am not in a position to agree with the argument that the conviction is incomplete without a sentence for the purpose of exercising the right of appeal. In order to be able to deal with the matter effectually I have suo motu taken up in revision C.A. No. 7 of 1946 on the file of the Sub-Divisional Magistrate, Vizagapatam. I have not considered it necessary to give notice to the accused as the order that I propose to make is favourable to him. The order of the Sub-Divisional Magistrate in C.A, No. 7 of 1946 dismissing the appeal is set aside and the appeal is restored to his file for being heard and

disposed of according to law. If on hearing both sides in the appeal the Sub-Divisional Magistrate comes to the conclusion that the accused should be acquitted altogether the reference made under Section 562 of the Code of Criminal Procedure to the Additional First Class Magistrate by the Stationary Sub-Magistrate becomes otiose. If, on the other hand, the Sub-Divisional Magistrate convicts the accused, it will be open to him to consider whether the conviction should be followed by a sentence or whether action should be taken by him under Section 562 of the Code of Criminal Procedure. In either case, the reference to the Additional First Class Magistrate would become infructuous.

4. The reference is answered accordingly and the papers will be returned to the District Magistrate.

5. The Sub-Divisional Magistrate, Vizagapatam, will be directed to restore C.A. No. 7 of 1946 to his file and dispose of it on the merits in the light of the observations made in this judgment.

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