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In Re: A.T. Krishnamachari

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Court : Chennai

Decided On : Aug-01-1933

Reported in : 147Ind.Cas.794; (1933)65MLJ534

Appellant : In Re: A.T. Krishnamachari

Judgement :
ORDER

Pakenham Walsh, J.

1. This is a revision petition preferred against the order of Sessions Judge of Bellary in Cr. M.A. No. 4 of 1933 refusing to direct the withdrawal of a complaint preferred by the Sub-Divisional Magistrate of Bellary against the petitioner. The facts which led to the complaint are briefly these. The petitioner was thrown out of a motor car on the night of 28th May, 1932 and very severely injured. Another occupant of the car, Vakil Gundachari, was also injured and he never recovered consciousness and died. On the morning of the 29th the Sub-Magistrate of Bellary recorded a statement under Section 164 from the petitioner (Ex. K) wherein he stated that the driver of the car was Sandur Raja's driver, i.e., P.W. 5 and that the cause of the accident was the collision of the car with a motor lorry. The inquiry by the police showed that the car was not driven by P.W. 5 but by one Chidambara Rao. This Chidambara Rao was afterwards tried and convicted. In his deposition before the Court the petitioner supported the police theory that Chidambara Rao had driven the car and that the accident was caused by the car being driven at an

excessive rate which brought it on to a gravel heap and caused it to upset. The accused then applied to the Sub-Divisional Magistrate under Section 476 to make a complaint against the petitioner for his false statement in Ex. K. A complaint was made and an appeal against it was dismissed. We are now asked to interfere in revision on two legal grounds and also on the merits of the case. The first legal ground which was taken at the time the petition was admitted was that the Sessions Judge had no power to dismiss the appeal summarily. This ground is not now pressed. The decision in Cr. R.C. No. 1331 of 1930 shows that the contention that Section 476-B is exhaustive as to the powers of the Appellate Court in the case of a complaint made under Section 476 is incorrect, and that the Appellate Court has power of remand and also of summary dismissal in such cases.

2. The second argument is that the statement Ex. K being one made under Section 164 to the Sub-Magistrate before the death of the pleader mentioned above which death led to the accused being ultimately charged under Section 304-A, the offence of giving false evidence cannot be said to have been committed in or in relation to the proceedings before the Sub-Divisional Magistrate. The authority chiefly relied on is Rami Reddi v. Public Prosecutor of Kurnool : AIR1915 Mad508 , but it has to be noticed that this decision was under the old Code in which the words were 'committed before it or brought to its notice in the course of a judicial proceeding'. The meaning therefore of the words 'in or in relation to a proceeding in that Court' was not and could not be considered in that case. Another point to be noticed is that the ground of the decision in that case was that the Sub-Magistrate was not subordinate to the Sessions Judge. We do not therefore think that that ruling can be applied to the present petition. Another case quoted as analogous is the Full Bench decision in Registrar, High Court v. Kodangi 1930 M.W.N 1130. There a certain man had sent a telegram to the police implicating four persons for a certain murder. The police charged only one of these persons on the ground that the charge against the others was deliberately false. The other persons were not brought to trial. The person who was brought to trial was convicted and the conviction confirmed on appeal. In disposing of the appeal in that case Sir Owen Beasley, Chief Justice, and one of us referred to a Full Bench the question as to whether a complaint against the informant to the police could be made under Section 476 with reference to his false complaint against the

persons not tried. The Full Bench held that the offence implicating the persons who were not tried could not be said to have been committed in relation to a proceeding of the Court which tried the case so as to enable it to lay a complaint under Section 476. We think this case is clearly distinguishable because the guilt or otherwise of the three accused who were not charged was not a matter before the Court and therefore the statement as to their guilt could not be held to be one in relation to the matter before the Court. No doubt in this case also P.W. 5 was not an accused before the Court, but from the very nature of the case it followed that if Chidambara Rao was guilty P.W. 5 was not, and that the implication of him by the petitioner in Ex. K was false. There is a recent decision of Burn, J. in Marotmma v. Emperor 1933 M.W.N. 12 (Cr. Cases) and also the decision of a Bench in Ponnusami In re 1933 M.W.N. 896 in which it has been held that a statement under Section 164 is one made in relation to a case which is subsequently tried on that matter even though the Court which tried the case did not record the statement. We may note that the facts in Ponnusami In re 1933 M.W.N. 896 are practically identical with those of the present case, and we are not prepared to dissent from the view taken in these cases, at any rate in a case like the present.

3. On the question of law one other point was urged before us, viz., that the appellate Court made an error in saying that the Sub-Magistrate made a note before recording the statement that the Sub-Assistant Surgeon had certified that the deponent was conscious. The person who made the note was the Sub-Inspector of Police. This is a trifling matter and the mistake could not have seriously influenced the Sessions Judge in his decision in dealing with the appeal.

4. On the merits we consider that the Sessions Judge is correct in his view that the question whether the appellant was at the time of Ex. K still suffering from the mental shock of the accident and the effects of morphia which was given to him after the accident and so should not be held responsible for what he then said is a matter for the Magistrate to decide at the trial of the case. It cannot even be said that we have before us on record anything like all the evidence which will or should be available to the trying Court to decide the matter. We think it would be premature to decide the question of fact in revision at this stage. On the finding on

that question of fact largely depends the question whether it is to the public interest that an enquiry should be made. But prima facie Ex. K is a false statement and we are not prepared to say that an enquiry into such a. prima facie false statement is not in the interest of public justice.

5. In the result the petition fails and is dismissed.

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