

Subramanya Ayyar Vs. the Queen

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Court : Chennai

Decided On : May-01-1883

Reported in : (1883)ILR6Mad396

Judge : Charles A. Turner, Kt., C.J. and ;Muttusami Ayyar, J.

Appellant : Subramanya Ayyar

Respondent : The Queen

Judgement :

Charles A. Turner, Kt., C.J.

1. On the 14th September the Magistrate of the District issued a warrant for the arrest of the petitioner to answer charges of offences punishable under Sections 2011 and 5062 of the Indian Penal Code. The signature of the Magistrate was not in writing, but impressed with a stamp. It contained no direction that bail should be taken.
2. The petitioner was arrested and brought before the Magistrate on 14th September, and was directed to attend on the following day. No written order was recorded for the adjournment, nor was any recognizance taken from the petitioner.
3. On the 15th September the District Magistrate tried the petitioner summarily, convicted him of an offence punishable under Section 506 of the Indian Penal Code, and sentenced him to undergo rigorous imprisonment for three months. The

record, which also was not signed but stamped, was apparently made by a clerk in violation of the provisions of Section 2292 of the Criminal Procedure Code, 1872. It recited that the charge was made under Section 506 of the Indian Penal Code; that the complainant stated that on the preceding Tuesday the accused called him out of his bandy, which he was driving near the Sevvaipet toll-gate, and asked him what he meant by giving evidence for the Muhammadans against the Palapattra, threatened to get him sent to jail if he went on, and otherwise frightened him; and that in consequence of the intimidation he, the complainant, did not keep an appointment he had made to attend the Inspector of Police. It also recited that the second witness, the master of the complainant, [398] stated he had overheard the conversation and corroborated the evidence of the complainant.

4. According to the record, the accused pleaded that he knew nothing of the man who accused him; and that he had been in Salem for ten days only, and had always behaved himself properly.

5. It is noted that the accused called no witnesses, and that practically he made no defence. On the 19th September the petitioner applied for a copy of the judgment with a view to obtain its Revision; but failing to procure the copy, a petition unaccompanied by a copy was presented to the Judge on the 2nd October : in this the petitioner stated that, having been released on the 14th September, he believed he was not legally under arrest on the 15th September, and that he was not aware the Magistrate intended to deal with the case summarily until the sentence was pronounced, but believed he would be committed for trial: he also added that he had not been called upon to produce his witnesses.

6. On the 3rd of October the Additional Sessions Judge rejected the application for want of a copy of the judgment.

7. On the 5th October Mr. Middleton, the Pleader for the petitioner, again applied to the District Magistrate for a copy of the judgment, but failed to obtain it; and the petitioner forwarded a petition to this Court, in which he repeated the objections he had taken to the proceedings in his application to the Judge. The Magistrate was required to report whether the accused was aware that the Magistrate proposed to dispose of the case, whether he was required to make his defence, and whether

he was invited to call any witnesses he desired to examine. The Magistrate reported that the accused was well aware that he was being tried; and that he was asked if he desired to call witnesses, but named none.

8. Before the petition was disposed of, the Judge of the District also referred the case for Revision, and, in addition to the points already noticed, pointed out that the warrant of commitment was not signed but stamped.

9. We apprehend that, when the law prescribes that a proceeding should be signed by a judicial officer, it ordinarily intends the signature should be made with a pen and not with a stamp. There are obvious reasons why judicial documents should be authenticated in such a manner that their authenticity may admit of proof. At the same time the affixing of a signature with a stamp and not with a pen would be no more than an irregularity, and it is not shown that the petitioner was in any way prejudiced by the nature of the signature.

10. The objection that the proceedings are invalid because no record was framed in the manner prescribed by law appears to us to be more substantial.

11. When the code permitted the recording of evidence in the vernacular of the Judge, it was careful to prescribe that the evidence should be recorded by the Judge unless he was incapacitated from so doing, and that, if he was unable to do so, the reason of his inability should be noted.

12. When the law permitted a Magistrate to try a case summarily, it provided, as a safeguard for the accused, that in non-appealable cases the record, and in appealable cases the judgment, should be written by the presiding officer. It contained no provision enabling him to depute that duty to a clerk. The irregularity is a grave one; and we are not prepared to say that there is not some ground for the petitioner's statement that he was unaware of the nature of the inquiry, and believed that, as he had been summoned to answer a charge triable by a Sessions Court, he would have been committed. We assume there must have been some ground for that charge, or the Magistrate would not have named it in the warrant; but the ground is not disclosed in the brief record prepared by the clerk. We must observe at the same time that, looking to the serious character of

the charge of intimidation in relation to the official position of the accused, and to the fact that a. conviction must entail the dismissal of the accused from the position to which he had risen after many years' service, the Magistrate did not, we think, exercise a sound discretion in trying the case summarily and depriving the accused of the privilege of an appeal.

13. The petitioner urges that the conviction may be set aside, and is content that a new trial should be ordered. The conviction is set aside; and, inasmuch as the Magistrate of the District in his report mentions circumstances which render it desirable that the case should be tried by another officer, we transfer it to the District Magistrate of North Arcot.

14. If the accused is convicted, account must be taken of the imprisonment he has already undergone.

15. Ordered accordingly.

1 Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender.

If a capital offence.

[Section 201: Whoever, knowing or having reason to believe, that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the

longest term of the imprisonment provided for the offence, or with fine, or with both.]

2 Punishment for criminal intimidation.

If threat be to cause death or grievous hurt, etc.

[Section 506 : Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.]

Language of judgment.

[Section 229:--Records made under section two hundred and twenty-seven and judgments recorded under section two hundred and twenty-eight shall be written by the presiding officer, either in English or in the language of the district in which the trial was held, or, by direction of the Court to which such presiding officer is immediately subordinate, in the language of the presiding officer.]

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