

Aiyasami Aiyar Vs. Aiyasami Aiyar

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Court : Chennai

Decided On : Mar-22-1917

Reported in : (1917)33MLJ545

Appellant : Aiyasami Aiyar

Respondent : Aiyasami Aiyar

Judgement :

ORDER

Abdur Rahim, J.

1. The petitioner who is a pleader practising in the District Munsif's Court of Shiyali and a senior member of the profession there was party, to a suit in which he was the plaintiff. He obtained a decree and the defendants deposited the amount of costs in Court. The petitioner for the purpose of drawing this amount from Court made an affidavit and in that affidavit he stated that the property which he gave as security according to the order of the Court was subject only to one encumbrance and was not subject to a mortgage in favour of one Vaidyanatha Aiyar. This apparently was not correct. When an amin was deputed to enquire whether the mortgage in favor of Vaidyanatha Aiyar did actually subsist, the petitioner admitted that he had made a mistake, and that as a matter of fact, there was this encumbrance also on the property. The learned District Munsif who heard the application made by one of the unsuccessful defendants in the suit for sanction for

the prosecution of the pleader considered all the circumstances and came to the conclusion that it was not a proper case for prosecution. Having regard to the position and character of the petitioner and the nature of the statement made by him and the fact that when the Amin was sent, he admitted the mistake, the District Munsif was of opinion that it was not a proper case for prosecution for making a false declaration under Section 199 of the Indian Penal Code, The learned District Judge has reversed that order holding that since there was a prima facie case of making a false statement, all the other circumstances must be left for consideration at the trial. This in my opinion is a wrong view of the law. When sanction is asked for, for the prosecution of a person for making a false statement in the course of a judicial proceeding or for any other offence of a like nature, it is the duty of the Court to which the application is made not only to see that there is a prima facie case, but also to decide whether it is a fit case, for prosecution in the interests of justice. The Court ought not to forget that statements which in fact are false are often made by men through the merest inadvertence or slip of memory. It is no doubt true that when a person makes an affidavit, he ought to be extremely careful to see that every statement that is made there is strictly accurate. At the same time Section 199, Indian Penal Code contemplates that a statement in order to come within the purview of the section must be one which is either false to the defendant's knowledge, or which he ought to have known to be false or could not have believed to be true. Here there were facts upon which the District Munsif was justified in saying that although the statement in question was made in a rather reckless manner it was not a fit case for prosecution. The position and character of the petitioner, the fact that the property even with both the mortgages was sufficient security and the other circumstances in which the statement was made were matters which the District Munsif was entitled to take into consideration in coming to a conclusion whether there ought to be a prosecution or not. I am of opinion that the order of the learned District Judge granting sanction should be set aside.

Napier, J.

2. I agree. The learned District Judge in his order states as follows: 'His pleas and his previous characters are matters which would be more relevantly taken into

consideration by the trying court.' This statement of the law, I consider to be incorrect. Section 195 of the Criminal Procedure Code states that no court should take cognizance of certain offences except with the previous sanction of a court but does not state on what materials that sanction is to be based. Speaking for myself I have always held that the view largely prevailing in this Court that the important matter to which a court should direct its attention is whether there was a prima facie case is incorrect. To my mind that is not the function of the court granting sanction. That is the function of the Magistrate who hears the case. It is the function of the Court which grants sanction to consider the whole of the circumstances of the case and decide whether it is in the interests of justice and purity of judicial proceedings that the person who has made the statement should be prosecuted. The Munsif has come to the conclusion that the statement was made not deliberately and intentionally to gain a benefit but as he puts it, in a reckless and haphazard manner and that makes the petitioner liable to blame of a reprehensible character. That seems to be exactly the right manner in which to view the action of the Vakil in this case. It is further pointed out by the Munsif that he is a gentleman of respectability and position and he obviously thinks that although he has been grossly reckless and may have brought himself within the mischief of Section 199, Indian Penal Code, he cannot have intended deliberately to mislead. That being so I think the District Munsif very properly refused sanction and I would set as de the order of the District Judge.