

In Re: Ramaswamy Chetty

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Court : Chennai

Decided On : Oct-28-1948

Reported in : 1949CriLJ581

Judge : Govinda Menon, J.

Appellant : In Re: Ramaswamy Chetty

Judgement :

ORDER

Govinda Menon, J.

1.The petitioner was convicted by the Court of the Sub-Magistrate, Madura Town, of an offence under Section 417 read with S, 511, Penal Code, and directed to be released under 8.562 (I), Criminal P. C, on his own bond for Es. 500 to appear and receive sentence within the period of one year and in the meantime to be of good behaviour, On appeal, the City First Class Magistrate, Madura, found that the offence committed on the facts and circumstances placed before the Court was, not one of attempt to cheat but would amount to an offence under Section 471, Penal Code. viz., using as genuine a forged document. On this finding, the appellate Court holding that the trial Court was not competent to try the offence under Section 471, Penal Code, ordered that he should be retried by the appellate Court itself, as a First Class Magistrate and it is this order that is now sought to be revised at the instance of the accused-petitioner.

2. The first point argued by Mr. Meenakshi-sundaram is that it is not open to the appellate Court to direct the trial of the case by itself for the offence under Section 471, Penal Code, because the necessary result of the framing of a charge by the trial Court under Section 417, Penal Code, read with Section 511, Penal Code, is the discharge of the petitioner of an offence under Section 471, Penal Code. That being so, unless that discharge is set aside by proper proceedings, it is not competent for any other Court to take cognizance of the offence. Secondly, it is urged that in any event the appellate Court ought not to have directed the trial of the offender by itself, because it has already practically formed an opinion against the accused on the merits of the case. The case against the petitioner as put forward in the Court of first instance is that he wrote three letters, Rss. F-1, P-2 and F-3, purporting to have been written by one Mr. Venkataramier requesting the issue of a free pass in the buses of Messrs. T. V. S, Co., Madura in favour of the petitioner, as he was a Congress worker doing propaganda work in Nilakottai. The ostensible writer of these letters, Venkataramier, denied having written any such letter and therefore it was that the appellant was charged with the offence of attempting to cheat.

3. The lower appellate Court has relied upon the decision in *Emperor v. Manicla, Gramani*, 50 Mad. 228 : 6 cri. h. J. 133, for holding that it has jurisdiction to try the case itself on the ground that the provisions of Section 423 (1)(b) do not preclude an appellate Court, when it reverses the finding and sentence under appeal, from trying the offender itself, if the offence is one ordinarily triable by it. In Such cases, the appellate Court takes cognizance under Section 190 (b), and not Section 190 (c). Mr. Meenakshisundaram contends that this decision cannot be applied to the facts of the present case and even if it is so, it requires reconsideration. No authority of this Court questioning the correctness of the judgment of Benson J. mentioned above has been brought to my notice. It has stood the test of time and has been in vogue for more than forty years and there are no circumstances which would justify me in coming to a conclusion other than what the learned Judge did. If under Section 433, Criminal P. C, the appellate Court can commit a case to the Court of Session or direct its trial by a competent Court subordinate to it, it necessarily follows that under Section 628, Criminal P. C., the superior Court is empowered to transfer the case to itself for trial. What the appellate Court has now

done is practically to incorporate be to the orders in the one, viz., sending the case for trial to some competent Subordinate Court and then transferring it to itself. There is nothing wrong in the lower appellate Court holding that the petitioner should be tried by itself.

4. But the real question in the case is whether on the facts placed before the lower appellate Court, there is sufficient material for hold-ing that the petitioner is guilty of an offence tinder Section 471, Penal Code, viz., using as genuine any document which he knows or has reason to believe to be a forged document. It is no doubt true that the document was not written by the person by whom it purported to have been written. But the mere fact that the petitioner was found in possession of a forged document would not show that he knew or had reason to believe that it was a forged document. Having carefully gone through the evidence in the case, I am not satisfied that there are sufficient materials on record to hold that the petitioner knew that the letters produced by him were forged ones. Under the circumstances I find it difficult to hold that any useful purpose will be served by a re-trial of the petitioner for an offence under Section 471, Penal Code. The order of the lower appellate Court directing a re-trial is set aside and the revision petition is allowed. The order of the trial Magistrate is therefore restored.