

In Re : Paramayan

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SooperKanoon Citation : sooperkanoon.com/780384

Court : Chennai

Decided On : Aug-12-1964

Reported in : 1965CriLJ557

Judge : Kailasam, J.

Appellant : In Re : Paramayan

Judgement :

ORDER

Kailasam, J.

1. This is a reference by the Sessions Judge of West Tanjore. One Paramayyan was convicted by the Sub Divisional Magistrate, Tanjore, for offences punishable under Section 454(II) and Section 380 read with Section 75 I.P.C. and sentenced to rigorous imprisonment for nine months for each of the offences, the sentences to run concurrently. The conviction was imposed on 30.5.1964, and the accused preferred an appeal through jail authorities on 15.6.1964. It was forwarded by the Superintendent of the Central Jail, Cuddalore, on 16.6.1964, and was received at the Sessions Court, Tanjore, on 18.6.1964. It was taken up on file on the same day and numbered as C.A. 77 of 1964. On 26.6.1964, an appeal was presented on behalf of the accused, Paramayyan, by his advocate. This was taken up on file on the same day and notice was ordered to the Public Prosecutor and the records were directed to be sent up for the hearing on 17.7.1964. After the filing of the

appeal by the advocate, the jail appeal preferred by the accused came up for disposal before the learned Sessions Judge, and he, after perusing the judgment and grounds of appeal, came to the view that no notice need be sent to the Public Prosecutor and also dismissed the appeal summarily on 27.6.1964. The appeal presented through counsel was numbered as C.A. 84 of 1964. That appeal was heard by the Sessions Judge on 17.7.1964, and was posted for judgment on 21.7.1964. During the hearing of the appeal, the attention of the learned Judge was not drawn to the fact that the appeal preferred by the accused from jail had already been disposed of. The learned Judge, after hearing the arguments and scrutinising the evidence, allowed the appeal, set aside the conviction and directed his release.

2. The Superintendent, Central Jail Cuddalore, on receipt of the order of acquittal in C.A. 84 of 1964, was surprised, on account of receiving two inconsistent orders, one of the dismissal of the appeal and the other of allowing the appeal. He, therefore, brought the matter to the attention of the learned Sessions Judge and requested clarification. In these circumstances the reference is made.

3. The jail appeal, C.A. 77 of 1964 was taken on file on 18.6.1964, and was dismissed on 30.6.1964, but before it was dismissed, that is, on 28.6.1964, the accused had preferred an appeal through counsel and that was numbered and was pending on the file of the Sessions Judge. The question for consideration is, whether the disposal of C.A. 77 of 1964 on 30.6.1964, when the appeal preferred by the accused through counsel (C.A. 84 of 1964) was pending, without notice to the counsel is valid. When once an appeal is preferred by an accused through counsel and is numbered, it cannot be properly disposed of without notice to the counsel. So, in C.A. 84 of 1964, the accused is entitled to be heard by the counsel. As the appeal was preferred before the jail appeal, C.A. 77 of 1964, was disposed of, the jail appeal also cannot be disposed of without hearing the counsel. It has been held that, if an appeal had been preferred by an accused from jail and was disposed of, and, if subsequently an appeal is preferred by the accused through counsel, the jail appeal is properly disposed of, and the appeal preferred by the accused through counsel cannot be entertained. Vide-Pratap Singh v. State of Vindhya Pradesh : 1961 CriLJ733 ; Kunhahamad Haji, In re ILR 46 Mad 382 : AIR

1923 Mad 426 and In re Neeladri Appadu 1946 MWN CrL. 96 : AIR 1947 Mad 243 (1).

4. In Goramma v. State 1951 MWN 91 this Court had to deal with a case in which a jail appeal was dismissed on 26.10.1949, while an appeal preferred by the accused through counsel on 4.10.1949 was pending on the file of that court. On 27.10.1949, when the appeal preferred through, counsel came up for hearing, the fact that the jail appeal had been dismissed by the learned Judge was brought to the notice of the learned Judge, and the judge dismissed the appeal, holding that he had no jurisdiction to hear the appeal preferred by the counsel, as he had already dismissed the jail appeal. It has been held that in cases in which a, jail appeal and an appeal preferred through counsel are pending, it is as if there were two appeals by the same individual and so the court cannot dispose of the appeal without affording an opportunity to the accused person to argue his case if it is represented by counsel. It was further held that the disposal of the jail appeal on 26.10.1949 while the appeal through counsel preferred on 4.10.1949 was on the file of the court, was irregular. With respect, I am in agreement with the views expressed by the learned Judge. In the circumstances, I hold that the disposal of C.A. 77 of 1964 on 27.6.1964 without notice to the counsel for the accused is irregular and that C.A. 84 of 1964 was properly disposed of. The order of acquittal passed in C.A. 84 of 1964 will therefore stand, and the order of conviction and sentence passed in C.A. 77 of 1964 will be set aside.

5. The reference is answered accordingly. The accused will be set at liberty forthwith.