

In Re: Natesa Padayachi

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Court : Chennai

Decided On : Apr-19-1915

Reported in : AIR1915Mad1143; (1915)28MLJ690

Appellant : In Re: Natesa Padayachi

Judgement :

ORDER

Kumarasami Sastri, J.

1. This is a petition to revise the order of the Sessions Judge of Trichinopoly acquitting the accused. The chief ground is that the Judge did not examine all the prosecution witnesses but made up his mind after two of them were examined.
2. As both of the assessors were of the same opinion as the Sessions Judge it would require very strong grounds for the High Court to interfere even if such a power exists. It is significant that the Government has not appealed against the acquittal.
3. It is very doubtful if a private party should, as a matter of right, be allowed to move the High Court in such cases. In *Tandavan v. Periannan* I.L.R. (1890) M. 363, it was held that an appeal against an acquittal by way of revision was not contemplated by the Criminal Procedure Code and their Lordships refused to hear the Petitioner's counsel. In the case *Sinnu Goundan in re* : (1914)26MLJ160 . (In re *Sinnu Goundan*) Mr. Justice Miller observes as follows: 'It seems to me that to

entertain proceedings by way of revision on a District Magistrate's report in a case when an appeal would lie from an acquittal is contrary to the spirit if not to the letter of Sub-section 5 of Section 435 of the Criminal Procedure Code.'

4. The restricted view taken by the Madras High Court as to the scope of Section 417 and 439 Criminal Procedure Code in *Tandavan v. Periannan* I.L.R. (1890) M. 363, has not been accepted by other courts; while the power of the High Court is recognised, it has been confined within very narrow limits. I need only refer to *Sukho v. Durga Prasad* I.L.R. (1879) A. 448, *Queen Empress v. Ala Baksh* I.L.R. (1884) A. 484, *Emperor v. Madar Bahsh* I.L.R. (1902) A. 128, In the matter of *Sheikh Amiruddin* 24 A.k 346, *Heerabad v. Framji Bhikaji* I.L.R. 15 B.349, *Municipal Committee of Dacca v. Hingoo Raj* I.L.R. (1882) C. 895, *The Deputy Legal Remembrancer v. Harne Bastolu* I.L.R. (1894) C. 161, *Rupal Mandal v. Reshav Mandal* (1907) 50. L.J. 452. *Bellew v. Messrs. Parker* 7 C.W.N. 521, *Rakhal Day Roy v. Kailash Barn* (1910) 11 C.L.J. 113, *Kangali Sardar v. Bame Ghamchateree* I.L.R. (1911) C. 786, *Shaikh Baguv. Raikha Singh* 18 C.W.N. 1244, Though in some of the cases above cited the Calcutta High Court went much further than the other courts as to the extent of the powers of the High Court the latest case on tfee point *Fanjelan Thahur v. Kasi Ghoudri* 19 C.W.N. 184, lays down that the powers of revision should be exercised when it is urgently demanded in the interests of Public Justice.

5. I entirely agree with the following observations of Jenkins G.J. in the above case. 'I am not prepared to say, that the court has no jurisdiction to interfere on revision with an acquittal but I hold it should ordinarily exercise this jurisdiction sparingly and only where it is urgently demanded in the interests of public justice.'

6. In the present case I do not think that there has been such a patent miscarriage of justice as to call for interference by the High Court. Two of the important witnesses for the prosecution were disbelieved by the Judge and the assessors and I cannot say they were wrong. The power of the court to stop the case if it thinks a waste of time to go on is undoubted though the stage at which it ought to do so may be a matter of opinion.

7. I do not think this is a fit case for interference and dismiss; the petition.

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