

In Re : S.M. Abdul Kareem

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Court : Chennai

Decided On : Nov-24-1948

Reported in : 1952CriLJ1008

Judge : Rajagopalan, J.

Appellant : In Re : S.M. Abdul Kareem

Judgement :

ORDER

Rajagopalan, J.

1. The order which the petitioner seeks to set aside in revision purports to be a direction given by the District Magistrate to the Public Prosecutor of Tanjore to withdraw under Section 494, Criminal P.C. the prosecution launched against a Head Constable and a Constable. On the motion of the brother of petitioner and after an enquiry by two Magistrates the case against the refused, that is, the Head Constable and Constable, was taken on file by the District Magistrate himself and the case was transferred to the file of the Sub Divisional Magistrate, Tanjore, for a preliminary enquiry. Subsequently, on the intervention of the District Superintendent of Police, the official superior of the two accused, the learned District Magistrate purported to pass the order he did on 26th November 1947 directing the withdrawal of the charges.

2. The preliminary objection of the learned Public Prosecutor, that there was no judicial order to consider at this stage in revision must prevail. Though the case was originally on the file of the Sub Divisional Magistrate, the moment the case was transferred the District Magistrate ceased to have any jurisdiction to continue the enquiry. The order dated 26th November 1947 must be viewed merely as an order of administrative instructions to the Public Prosecutor. It was open only to the Public Prosecutor to move the Court under Section 494, Criminal P.C. What should happen to the Public Prosecutor should he ignore the instructions given to him by the District Magistrate and should the Public Prosecutor refuse to withdraw the prosecution I am not called upon either to contemplate or discuss. At any rate one thing is clear. It was wholly within the discretion, a discretion to be exercised in a judicial manner of the Sub Divisional Magistrate to permit the withdrawal or refuse such permission should the Public Prosecutor prefer an application under Section 494, Criminal P.C. There is nothing in the order of the District Magistrate dated 26th November 1947 which could in any legal manner affect the exercise of that discretion. It is unfortunate the learned District Magistrate exceeded the limits of discretion in discussing as he did the evidence in 1 case diary and the possible evidence that might be forthcoming in the trial. The Sub Divisional Magistrate would be well advised in ignoring the contents of this letter should this letter be placed before him at any stage. It must, however, be said in fairness to the Public Prosecutor, Tanjore, that he himself could have merely applied for the withdrawal of the charges without indicating at that stage the reasons that prompted the District Magistrate to issue instructions to the Public Prosecutor.

3. To reiterate, the order complained of is only an administrative order, and it is still open to the District Magistrate or his successor in office to revoke that order and allow the enquiry to proceed. The Petition, is

dismissed.

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