

Narayana Naick and ors.

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Court : Chennai

Decided On : Mar-12-1931

Reported in : (1931)61MLJ125

Appellant : Narayana Naick and ors.

Judgement :

ORDER

Jackson, J.

1. Petitioners were complained against by a private person and charged under Section 166, Indian Penal Code, a non-cognizable non-compoundable offence.
2. The complainant then died.
3. The Magistrate was moved to acquit the accused under Section 259, because the complainant was absent, and he ordered the case to proceed. This petition is to revise that order.
4. The Magistrate's action is within the four corners of Section 259, because after the charge is framed the Magistrate has no discretion in the matter.
5. But *Gulam Mohideen Quarishi Sahib v. Akamadulla Begum Sahiba I.L.R. (1922) 46 M. 88*, the ruling apparently which the Magistrate says does not apply (he should give the reference to any ruling which he mentions), lays down as a

general principle on page 89 that criminal proceedings instituted by a private complainant abate on such person's death. I have been able to find no such principle in the Code.

6. It is argued on behalf of petitioners that death is unlike other absence, because a party frivolously complained against will have no redress. But a complete disappearance may be as effective as death, and anyhow after a charge has been framed there is not much question of frivolity and vexatiousness.

7. In *In re Ramasamier* (1915) 30 I.C. 1001 : 16 Cri.L.J. 713 Sir William Ayling has held that there is no abatement of a criminal case on the death of the complainant.

8. In *U Mo Gaung v. U Po Sin* I.L.R. (1928) 6 Rang. 664 a case is ordered to proceed despite the complainant's death.

9. In the circumstances it cannot be said that there is a principle of general application that private complaints abate upon death; and the point was rightly decided by the Lower Court.

10. The petition is dismissed.

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