

In Re: K. Belli Gowder

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Court : Chennai

Decided On : Aug-31-1934

Reported in : 153Ind.Cas.256; (1935)68MLJ330

Appellant : In Re: K. Belli Gowder

Judgement :

ORDER

Pakenham Walsh, J.

1. There were two societies at Aravangadu the co-operative Stores Society and the Co-operative Credit Society. The secretary of each society was charged with offences under Sections 409 and 477-A, Indian Penal Code. They were tried separately and one was sentenced to one year's rigorous imprisonment and the other to 1 1/2 years rigorous imprisonment with fines. Both appealed to the Sessions Judge. He considered that they should have been charged under Section 120-B, read with Sections 409 and 477-A, Indian Penal Code, and ordered them to be committed to the Sessions by the Joint Magistrate on the amended charge. The Joint Magistrate asked the accused if they wished to cross-examine the witnesses after the amended charge and let in evidence. They did not do so and they were committed to the Sessions. Two petitions have been filed, one against the order of the learned Sessions Judge and the other against the commitment.

2. It is clear that the accused cannot be committed to sessions by simply framing an amended charge because the evidence against each of them has been given in the absence of the other. In Chinnappan, In re (1890) 2 Weir 259 it is laid down that the commitment based on evidence recorded in the absence of the accused is illegal. Consequently the commitment must be quashed. As regards the order of the learned Sessions Judge, the subject of the revision petition, that order should be amended to one directing a preliminary inquiry for the offences there mentioned and committal to sessions if a prima facie case is found to be made out.

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