

Queen-empress Vs. Gopal Goundan

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Court : Chennai

Decided On : Mar-23-1896

Reported in : (1896)ILR19Mad269

Judge : Arthur J.H. Collins, C.J. and ;Benson, J.

Appellant : Queen-empress

Respondent : Gopal Goundan

Judgement :

ORDER

1. In all these cases, the Joint Magistrate has set aside the findings and sentences of a Second-Class Sub-Magistrate and has ordered a retrial on the ground that, as the Sub-Magistrate made a memorandum of the evidence in English instead of in the Vernacular, there is no legal record of the evidence, and the trial was therefore wholly irregular and illegal. He refers to a judgment of the Sessions Court of Madura, in which the same view was taken.

2. We are of opinion that the decisions of the Joint Magistrate are erroneous.

3. The Sub-Magistrate was trying cases of the classes mentioned in Section 355, Criminal Procedure Code. That section does not require him to record the evidence of the witnesses, but only to make a memorandum of the substance of the evidence of each witness as it proceeds. Section 357[1], Criminal Procedure Code, carefully prescribes the language in which the evidence of witnesses in the

trials and inquiries referred to in Section 356 shall be taken down, but the Code is silent as to the language in which a memorandum of the substance of the evidence in the less important cases enumerated in Section 355 is to be recorded.

4. We are not aware of any provision of law which renders it illegal for a Native Second-Class Magistrate to record the memorandum referred to in Section 355 in English, any more than it is illegal for an English Magistrate to do so.

5. Even if the procedure were irregular, there is nothing to show that the accused were in any way prejudiced by the Magistrate's procedure, or that any failure of justice was thereby occasioned, and that being so, the irregularity would not justify the reversal of the convictions (Section 537, Criminal Procedure Code).

6. We must set aside the order of the Joint Magistrate in all these cases and direct that the appeals be restored to his file and decided in accordance with law.

[1]

[Section 357: The Local Government may direct that in any district or part of a district,

or in proceedings before any Court of Session, or before any

Language of record of Magistrate or class of Magistrates, the evidence of each witness

evidence. shall in the cases referred to in Section 356 be taken down by

the Sessions Judge or Magistrate with his own hand and in his

mother-tongue, unless he is prevented by any sufficient reason from taking down the

evidence of any witness, of which case he shall record the reason of his inability to do so,

and shall cause the evidence to be taken down in writing from his dictation in open Court.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and

shall form part of the record:

Provided that the Local Government may direct the Sessions Judge or Magistrate to take

down the evidence in the English language, or in the language of the Court, although such

language is not his mother-tongue.]

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