

In Re: Syed Ibrahim

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SooperKanoon Citation : sooperkanoon.com/783790

Court : Chennai

Decided On : Aug-13-1956

Reported in : AIR1959Mad32; 1959CriLJ203

Judge : Somasundaram and ;Ramaswami Goundar, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 4, 4(1), 250 and 417(3)

Appeal No. : Criminal Misc. Petn. No. 857 of 1956 and Criminal Appeal No. 380 of 1956

Appellant : In Re: Syed Ibrahim

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : V.T. Rangaswami Aiyangar and ;S. Parthasarathi, Advs.

Disposition : Petition dismissed

Judgement :

Somasundaram, J.

1. This is an application by P. W. 1 in S. C. No.6 of 1956 on the file of the Sessions Judge of West Tanjore for leave to appeal under Clause (3) of Section 417 Crl. P. C. against the acquittal of the respondent.

2. The respondent was tried on a charge of murder. The case was instituted upon a police charge-sheet. It is represented that P. W. 1, the brother of the deceased, was the person, who gave the first information to the village munsif, which resulted subsequently in investigation by the police and the filing of the charge-sheet by them. Section 417 Crl. P. C. deals with appeals against acquittals. Under Clause (1) of Section 417, the State Government is given power to direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than High Court.

We are not concerned with Clause (2) of Section 417, as it deals with the investigation by the Delhi Special Police Establishment. Under Clause (3) of Section 417, if an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court It is clear from the provisions of this clause that acquittal should have been passed in any case instituted upon a complaint. 'Complaint' had been defined in Section 4 (1) (h) Crl. P. C. and it is as follows:

'Complaint' means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some persons whether known or unknown, has committed all offence, hut it does not include the report of a police officer.'

It is clear from the definition of this expression that it is only the person, who makes an allegation orally or in writing to a Magistrate, who has been given the right under Clause (3) of Section 417 to make an application to this court and apply for leave to appeal, Mr. V. T. Rangaswami Aiyangar appearing for the petitioner contends that the expression 'complaint' must be construed as including the person who makes a complaint to the village Munsif as well, as such a complaint to the village munsif results in an investigation by the police and the subsequent filing of a police charge-sheet before the Magistrate.

In that sense, according to his contention, he must he deemed to be a complainant, as it is he who sets the Criminal law in motion. But the definition of

the expression 'complaint' in Section 4(1) (h) refers only to a complaint made to a Magistrate and not to a village munsif, although such a complaint to the village munsif may ultimately result in the Magistrate taking action against the accused. It is conceded in this case that P. W. 1, the petitioner herein, did not make any allegation orally or in writing to any magistrate with a view to his taking action under the Criminal Procedure Code. The complaint, therefore, to the village munsif, will not fall within the definition of the complaint in the Code, and therefore this petition is incompetent under Clause (3) of Section 417 Crl. P. C.

3. Mr. V. T. Rangaswami Aiyanger invites our attention to the expression 'complaint' used in Section 250 Crl. P. C. prior to the amendment of the Criminal Procedure Code in 1923. Then the provision was as follows:

'If in any case instituted upon complaint as defined in the Code or upon information given to a police officer or to a Magistrate.....'

Now the words 'as defined in this Code' have been omitted by the amendment of 1923. He therefore contends that when the expression 'complaint' is used in Section 250 as meaning a complaint as defined in this Code and that when such an expression does not appear in any other part of the Code, there must be a distinction between the complaint as defined in the Code and other complaints. In our opinion, the words as defined in the Code have been omitted in the amendment, because of its redundancy. There is no need to use the expression 'as defined in the Code', when 'complaints' has already been defined in Section 4(1)(h), of the Code. We do not think that the amendment makes any difference with regard to the expression 'complaint.' As the present petition does not lie under Clause (3) of Section 417 Crl. P. C. the petitioner has no locus standi to prefer this appeal, and leave to appeal is therefore refused.