

The Queen Vs. Venguvayyanganar

The Queen Vs. Venguvayyanganar

SooperKanoon Citation : sooperkanoon.com/783823

Court : Chennai

Decided On : Aug-11-1882

Reported in : (1883)ILR6Mad25

Judge : Innes, Officiating C.J. and ;Muttusami Ayyar, J.

Appellant : The Queen

Respondent : Venguvayyanganar

Judgement :

Innes, Officiating C.J., and Muttusami Ayyar, J.

1. The accused, who is the Nattamgar (Headman) of a village, was tried under Section 4091, Indian Penal Code, for criminal breach of trust in respect of part of certain revenue collections which he was charged with embezzling. He was discharged under Section 215, Criminal Procedure Code, the reason given by the Joint Magistrate for such discharge being that he could not find the accused guilty on the gross sum in respect of which he was charged.

2. If, however, the Magistrate found the charge established as to a portion of the amount, he should have convicted as to that portion.

3. From his judgment it seems doubtful what he found as to the sums mentioned in exhibits A and N. His order of discharge should be set aside, and he should be directed to come to a finding as to the guilt or innocence of the prisoner on these

items. If he finds him guilty, he should pass sentence according to law.

4. In connection with this case the District Magistrate raises the question whether a District Magistrate is not really legally competent to revive the prosecution in a case in which the accused has been improperly discharged under Section 215, Criminal Procedure Code, and whether the proper course in such cases is not to take up the case under Section 142, Criminal Procedure Code, and, if need be, to refer it under Section 443 for trial by another Magistrate, instead of referring the proceedings to the High Court under Section 296, Criminal Procedure Code.

5. The District Magistrate should be informed that the Court adheres to its rulings of the 22nd October 1877 and 16th January 1878.

1 Criminal breach of trust by public servant or by banker, merchant or agent.

Section 409 : Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.]

2 Who may act without complaint.

[Section 142 : The Magistrate of the District, any Magistrate of a division of a district, or any Magistrate duly empowered in that behalf, in any case in which he is competent to try or to commit for trial, may, without any complaint, take cognizance of any offence which he suspects to have been committed, and may issue process in the manner hereinafter prescribed to compel the appearance before him of persons whom he suspects to have committed any such offence.

Complaint or sanction required in certain cases.

Nothing in this or in the last preceding section shall be held to authorise 'a Magistrate to take cognizance of a case without complaint, when the offence falls under Chapters XIX, XX or XXI of the Indian Penal Code; nor to entertain a

complaint, or to take cognizance without complaint, of an offence without sanction, where such offences, by any law in force, may not be entertained without sanction.]

3 Transfer of criminal cases to Subordinate Magistrate.

[Section 44 : The Magistrate of the District, or any Magistrate of a division of a district, may make over any criminal case taken up by him on suspicion, or brought before him on complaint, or on report by the Police, for inquiry or trial to any Magistrate subordinate to him, to be dealt with to the extent of the powers with which the Subordinate Magistrate may have been invested under the provisions hereinbefore contained.

The Magistrate making the reference may, if the case was brought forward on complaint, before such reference, examine the complainant as prescribed in this Act; but, if he does not do so, the Magistrate to whom the case is referred shall proceed as if the complaint had been made to him.

The order of reference shall be recorded in a proceeding, and, if the case has been brought forward on the report of a Police Officer, shall be recorded on such report; and all process issued for causing the attendance of the accused person or the witnesses shall direct them to attend before the Magistrate to whom the case has been referred.

The Magistrate making the reference may, if he thinks proper, retransfer to his own file the case referred under paragraph one of this section, and when he has done so, and not before, may proceed therein.

4 The question raised in the proceedings submitted by the District Magistrate is whether a District Magistrate has power to direct a revival of a prosecution when the accused person has been discharged by a Magistrate under Section 215 of the Code of Criminal Procedure.

The High Court are of opinion that, if a Magistrate, having jurisdiction to try a case, discharges the accused under Section 2] 5, it is not competent to a District Magistrate to revive the prosecution on the same evidence and to place the

accused person upon his trial before another Magistrate.

5 The accused in this case was placed on his trial before the Second-class Magistrate on a charge of an offence under Section 324 (voluntarily causing hurt by means of dangerous weapons) of the Indian Penal Code. The Second-class Magistrate, after hearing the evidence, discharged the accused under Section 215 of the Code of Criminal Procedure.

On a perusal of the Second-class Magistrate's Calendar the Divisional Magistrate, purporting to act under Section 142 of the Code of Criminal Procedure, revived the prosecution and summoned the accused and the witnesses to attend his Court. Subsequently, on application being made to the District Magistrate, the case was transferred to another Divisional Magistrate, who tried and convicted the accused.

An appeal against the sentence having been preferred to the Sessions Court, the Sessions Judge held that the Divisional Magistrate had no power of his own motion to review the prosecution. The case, however, appeared to the Session Judge to be one in which the sentence might fitly be upheld by the High Court under the powers conferred in Section 297 of the Code of Criminal Procedure.

The Session Judge is correct in thinking that the Divisional Magistrate had no power of his own motion to revive the prosecution. It has already been ruled (High Court's Proceedings of 22nd October 1877, No. 2424) that if a Magistrate, having jurisdiction to try a case, discharges an accused person under Section 215 of the Code of Criminal Procedure, it is not competent to a District Magistrate (still less to a Divisional Magistrate) to revive the prosecution on the same evidence. When an accused person has been improperly discharged, the proper course is to apply to the High Court to exercise the powers conferred in Section 297, Clause 2, of the Code of Criminal Procedure. The powers conferred in Section 297 of the Code of Criminal Procedure are, however, discretionary powers.

In the present case, having regard to all the circumstances which are somewhat peculiar, the High Court think their discretion will best be exercised by withholding any directions for a revival of the prosecution.

The conviction and sentence in case No. 63 on the file of the Head Assistant Magistrate are hereby annulled as being contrary to law. The accused will be set at liberty, and the fine, if it has been levied must be refunded.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com