

Krishna Reddi and ors. Vs. Subbamma

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Court : Chennai

Decided On : Sep-27-1900

Reported in : (1901)ILR24Mad136

Judge : Arnold White, C.J. ;Subrahmania Ayyar and ;Davies, JJ.

Appellant : Krishna Reddi and ors.

Respondent : Subbamma

Judgement :

1. The order of the Magistrate was in substance an order discharging the accused in respect of an alleged offence under Section 477, Indian Penal Code.
2. If Section 209 of the Criminal Procedure Code is to be construed as meaning that there can be no 'discharge' under that section in respect of an offence exclusively triable by a Court of Session in cases where it appears to the Magistrate that the accused should be tried before himself or some other Magistrate in respect of offences not so exclusively triable, there would be a deadlock, since there is no provision in the Code, other than that contained in Section 209, for dealing with a case where the Magistrate is of opinion that there is no evidence of an alleged offence which is triable exclusively by a Court of Session, but considers that the accused should be tried before himself, or some other Magistrate in respect of alleged offences which are not so exclusively triable. From the terms of the Magistrate's order it is clear that he adjudicated upon the

question whether there was any evidence against the accused in respect of the major offence. The Magistrate came to the conclusion that there was not, and he declined to charge him with the major offence. It seems to us that this is a 'discharge' within the meaning of Section 209.

3. Chapter XVIII relates to enquiries into cases triable by the Court of Session or High Court. The primary object of Section 209 is to make provision for the procedure in such cases. If in the opinion of the Magistrate, there is no evidence to warrant a charge for an offence exclusively triable by a Court of Session, he may 'discharge' the accused in respect of the alleged offence and, having done so, may proceed as regards the minor offence or offences under chapter XXI or other appropriate chapter. In fact, a Magistrate cannot proceed to act under the latter part of sub-section I.L.R. 20 Calc 633 of Section 209 until he has 'discharged' the accused under the former part of the sub-section. This is the course which the Magistrate adopted in the present case.

4. We think that the Sessions Judge had jurisdiction to make the order under Section 436. We agree with the judgment of Benson, J., and the general grounds of that judgment and we are unable to agree with the view taken by the Calcutta High Court in *Baijanath Pandey v. Gauri Kanta Mandal* I.L.R. 20 Calc. 633 and with the decision of a Division Bench of this Court, *Queen-Empress v. Hanumantha Reddi* I.L.R. 23 Mad. 225 which followed the Calcutta High Court.