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In Re: Periasami Goundan

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SooperKanoon Citation : sooperkanoon.com/784717

Court : Chennai

Decided On : Jan-21-1937

Reported in : (1938)1MLJ854

Appellant : In Re: Periasami Goundan

Judgement :
ORDER

Pandrang Row, J.

1. One of these petitions is to set aside the order of the Sub-Magistrate dismissing the petition presented by the accused praying that the complaint against him should be dismissed and he should be acquitted because there was no valid complaint against him as contemplated by Section 223 of the Local Boards Act; in the other petition the order sought to be revised declined to allow the case to be withdrawn as prayed for by the section officer who filed the complaint on the ground that he had no power to withdraw the case as the prosecution was sanctioned by the President, District Board. It is clear from this statement of the facts that both the parties, namely, the prosecution and the accused, desire to put an end to the case but the Magistrate without giving any other reason than that the section officer had no power to withdraw the complaint has declined to put an end to the case according to the desire of both the parties. The Sub-Magistrate treated the section officer as the complainant both by examining him in support of the prosecution and also in his order on the petition for dismissing the complaint

holding that the section officer who was examined by him was the complainant. The view of the Magistrate that because the prosecution was originally authorised or sanctioned by the President, District Board, only the President, District Board, can withdraw the complaint is not correct, because Section 223 of the Local Boards Act does not refer to withdrawal of legal proceedings but only to the initiation of legal proceedings. So far as the withdrawal of the prosecution is concerned, that is to say, in cases instituted under the Local Boards Act, the authority for withdrawal is conferred not by the Local Boards Act but by the Criminal Procedure Code. In this case the authority is conferred by the Criminal Procedure Code on the complainant. The complainant in this case was the section officer and he was competent to apply for permission to withdraw the case. As the learned Sub-Magistrate refused to grant permission not on the merits but on the ground that the section officer had no power to withdraw I see no reason why the permission should not have been granted. The order of the Magistrate has not expressly refused to grant permission but he has merely stated in his order that the section officer has no power to withdraw the case as the prosecution was sanctioned by the President, District Board. This view in my opinion is not justified by the circumstances of the present case and it is unnecessary in the circumstances to remit the case again to the Sub-Magistrate for fresh disposal. There is no reason why the permission should not be granted, and permission is hereby granted for withdrawing the case. The petitioner in these two petitions is one and the same. He is therefore acquitted.

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