

In Re: S. Venkatakrishnan

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Court : Chennai

Decided On : Oct-04-1950

Reported in : AIR1951Mad469; (1950)2MLJ763

Judge : Somasundaram, J.

Acts : [Code of Criminal Procedure \(CrPC\) \(Cr.P.C.\), 1898](#) - Sections 238

Appeal No. : Criminal Revn. No. 242 and Cri. Revn. Petn. No. 227 of 1950

Appellant : In Re: S. Venkatakrishnan

Advocate for Def. : State Prosecutor

Advocate for Pet/Ap. : S.G. Rangaramanujam, Adv.

Disposition : Accused acquitted

Judgement :

ORDER

Somasundaram, J.

1. The petitioner in this case has been convicted under Sections 78 and 112, Motor Vehicles Act. The petitioner was prosecuted for an offence under Section 116 and the lower Court in effect finds that the offence under Section 116 has been made out but did not convict him very rightly for that offence as the

mandatory procedure prescribed by Section 131 has not been complied with.

2. The lower Court, however, convicted the petitioner for an offence under Sections 78 and 112, as this was a minor offence to one under Section 116 and as from the evidence the minor offence could be said to have been made out.

3. The provision of law under which an accused charged with a major offence, can be convicted for a minor offence is Section 238, Criminal P. C. Mr. Govind Swaminadhan, the State Prosecutor, very rightly drew my attention to the wording of the Section 238. According to the section, when a person charged with an offence consisting of several particulars, a combination of some of which constitutes a minor offence and such combination is proved and the remaining particulars are not proved, then he can be convicted of the minor offence, though not charged with it.

4. Under Clause (2), when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, though he may not be charged with.

5. Now in this case, the accused was charged with a major offence and all the particulars of that offence have been proved. There is no question that some only of the particulars are proved which reduce it to a minor offence. The question in such cases is whether he can be convicted of the minor offence on account of a legal bar to the prosecution of a major offence. There is no provision of law under which a person can be convicted for a minor offence except under the provisions of Section 238, Criminal P. C., and this does not in terms apply to this case. It is doubtful, therefore, whether the petitioner in the circumstances can be convicted for the minor offence. The question is not free from difficulty. The benefit of doubt must be given to the petitioner. His conviction and sentence are set aside and he is acquitted. The fine, if paid, will be refunded.

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