

In Re: A. Ramanna

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SooperKanoon Citation : sooperkanoon.com/784994

Court : Chennai

Decided On : Nov-17-1932

Reported in : (1933)65MLJ791

Appellant : In Re: A. Ramanna

Judgement :

ORDER

Curgenvan, J.

1. I have not been shown that the learned Sub-Divisional Magistrate was wrong in refusing a further opportunity to the accused to cross-examine the prosecution witnesses. His predecessor had heard the prosecution case and framed a charge before he was transferred. As has been held in *Sriramulu v. Veerasalingam* I.L.R. (1914) 38 Mad. 585 : 27 M.L.J. 589 it is not in such circumstances open to the second Magistrate to ignore the charge. He must proceed with the case on the footing that the charge has already been framed. The right of the accused then is to be found in proviso (a) to Section 350(1), Criminal Procedure Code. It is sometimes loosely described as a right to a de novo trial, but all that the provision allows is that he may demand that the witnesses or any of them be resummoned and re-heard. When a charge has already been framed, this, as Ayling, J. remarks, makes the Magistrate's position practically the same as that of his predecessor would have been if, after framing a charge, he had heard further cross-examination of the prosecution witnesses under Section 256(1). It follows

that, if the second Magistrate is not to frame a fresh charge but to act upon the charge already framed, no occasion can arise for any cross-examination after the framing of the charge, and in fact the reasons for allowing such further cross-examination cannot in the circumstances exist. The accused are entitled under Section 350 to have any of the witnesses recalled and re-heard, and that is the extent of their right. They cannot have them recalled and re-heard a second time.

2. This criminal revision petition is dismissed.

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