

Queen-empress Vs. Chenchi Reddi

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SooperKanoon Citation : sooperkanoon.com/785346

Court : Chennai

Decided On : Oct-19-1900

Reported in : (1901)ILR24Mad238

Judge : Arnold White, C.J. and ;Benson, J.

Appellant : Queen-empress

Respondent : Chenchi Reddi

Judgement :

1. So far as the words of Section 556 of the Criminal Procedure Code are concerned, we should have felt no doubt that the Deputy Magistrate was not disqualified to try the case. The terms of the illustration however give rise to a difficulty.

2. The question whether a given case falls within the provisions of Section 556 must be a question of fact to be determined by the circumstances of the particular case. In the Calcutta case to which our attention has been called (Girish Chunder Ghose v. The Queen-Empress I.L.R. 20 Calc. 857 where the Magistrate was held disqualified to try the case, it appeared that he had taken a vary active part in connection with the case as an executive officer. On the other hand, in the two Allahabad oases (In the matter of the petition of Ganeshi I.L.R. 15 All. 192 and Queen-Empress v. Narain Singh I.L.R. 22 All. 340, the Court held the Magistrate was not disqualified. The illustration says: A, as Collector upon consideration of

information furnished to him, directs the prosecution of B for a breach of the Excise Laws. A is disqualified from trying this case as a Magistrate.'

3. The word used is 'directs', which we take it, means institutes, or gives orders for the institution of the prosecution.

4. In the present case the order of the Magistrate was in these terms: The second prosecution witness made a report to the Tahsildar, the first prosecution witness. He, in his turn, reported the matter to the Divisional officer (i.e., myself) who authorized him to criminally prosecute the accused on such charges as may be capable of being proved in a Criminal Court.

5. This is an authorisation and not a direction.

6. In our judgment the Deputy Magistrate was qualified to try the case.

7. In any case the Sessions Judge ought to have directed a retrial and not to have acquitted the accused.

8. We must set aside the order of the Sessions Judge and remand the appeal to him to be dealt with on the merits.

9. Ordered accordingly.