

Gopal Naick and ors. Vs. Alagirisami Naick

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Court : Chennai

Decided On : Dec-19-1930

Reported in : AIR1931Mad770; (1931)60MLJ520

Appellant : Gopal Naick and ors.

Respondent : Alagirisami Naick

Judgement :

ORDER

Jackson, J.

1. The first point is that the Public Prosecutor having withdrawn from the case, the accused must be acquitted. It does not appear that there was, formal withdrawal from the prosecution-under Section 494. The Prosecution Inspector simply dropped out and let a vakil carry on the prosecution in what was practically a private complaint.

2. The second point is whether the Police on receiving information in a complaint forwarded under Section 202 can investigate under Section 156. The Police need no more than report; but if they choose to investigate, it is not illegal. '

3. If Emperor v. Haji Nur Mahomed I.L.R. (1928) B. 339 is to the contrary, I respectfully disagree. In In re Arula Kotiah (1911) 10 M.L.T. 120 : 12 Cri. L.J. 463 it was held that a Magistrate having taken cognizance of a complaint is bound, if he

decides to delay process under Section 202, to call for a report and cannot act under Section 156 (3) ; but this ruling does not affect the powers of the Police. It would be a strange state of the law if a dangerous murderer was at large and the Police could not arrest him because some misguided person had already lodged a complaint so suspiciously false that the Magistrate had called for a report. King-Emperor v. Bhola Bhagat I.L.R. (1925) Pat. 379 is to the same effect.

4. The petition is dismissed.

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