

In Re: Simhadri Krishnamurthi

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Court : Chennai

Decided On : Jul-27-1951

Reported in : AIR1953Mad259; (1951)IIMLJ270

Judge : Panchapakesa Ayyar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 417 and 438

Appeal No. : Criminal Revn. Case No. 1561 of 1950 and Case Ref. No. 78 of 1950

Appellant : In Re: Simhadri Krishnamurthi

Advocate for Pet/Ap. : Public Prosecutor

Disposition : Reference accepted

Judgement :

1. I have perused the records and heard the learned Public Prosecutor. Nobody appears for the accused. No doubt there was an error committed by the learned Assistant Sessions Judge, Tenali, as he himself has admitted when he took 16 years instead of 18 years, (relying on an uncorrected copy of the Penal Code in his office not incorporating the amendment in this respect in 1949) as the relevant age. So he took the girl's consent to be valid and committed errors right along the line on that basis and acquitted the accused Simhadri Krishnamurthi who was charged with kidnapping the girl Tulasamma from the custody of her lawful guardian with intent to marry her against her will. The learned Sessions Judge,

Guntur, discovered this patent error on perusing the calendar in the case and after calling for the records and examining them. He has made this reference. The Government had not filed an appeal under Section 417, Cr. P. C., and the aggrieved girl or her guardian has not filed a revision petition against the acquittal. The learned Public Prosecutor drew my attention to the decision of Somasundaram J. in -- 'Eravadu and others v. The State', 1951 MWN CrI p. 16 (Referred Case No. 22 of 1950) wherein the learned Judge held that a reference by a District Magistrate under Section 438, Cr. P. C. was not competent as his remedy was only by way of moving the State to file an appeal under Section 417, Cr. P. C. Here the referring officer is the Sessions Judge and not a District Magistrate and it is certainly competent for him to refer this case to this court under Section 438, Cr. P. C. as he is not the person expected to move the State to file an appeal under Section 417, Cr. P. C. So I accept the reference of the learned Sessions Judge and set aside the acquittal of Simhadri Krishnamurthi in S. C. No. 38 of 1950 by the Assistant Sessions Judge of Tenali and direct the case to be tried afresh by the Sessions Judge, Guntur.

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