

In Re: Gorrepaty Ramasubbayya

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SooperKanoon Citation : sooperkanoon.com/787969

Court : Chennai

Decided On : Jan-26-1938

Reported in : AIR1938Mad529; (1938)1MLJ403

Appellant : In Re: Gorrepaty Ramasubbayya

Judgement :

ORDER

Pandrang Row, J.

1. These petitions seek to revise the orders of the Sub-Divisional Magistrate of Bandar dated 8th November, 1937, transferring P.R.C. No. 1 of 1937 from his file to the file of the Sub-Magistrate of Avanigadda for disposal and also transferring C.C. Nos. 63 and 65 of 1937 on his file to the Sub-Magistrate with directions to treat the latter cases as preliminary register cases, hold a preliminary enquiry and dispose of them according to law. So far as the transfer of P.R.C. No. 1 of 1937 is concerned, the petitioners do not take any objection but they take very serious objection to the transfer of the Calendar cases which are triable by a First Class Magistrate to a Second Class Magistrate with a direction to treat them as preliminary register cases, the intention of such transfer being that the cases should be committed to the Sessions Court for trial. The petitioners are the accused in these Calendar cases. It is not stated by the learned Sub-Divisional Magistrate that the offences disclosed in the Calendar cases are so serious that he cannot give adequate sentences. He was under the misapprehension that

these cases were in the nature of counter-cases to P.R.C. No. 1 of 1937 a case of murder. As a matter of fact it does not appear that they are really counter-cases in the true sense of the term. They relate to an occurrence which took place at a different spot and subsequent to the murder. They may be connected with the murder case but they do not put forward a different version of the occurrence which forms the subject-matter of the murder case. Even if they were counter-cases to the murder case, the order of the Sub-Divisional Magistrate transferring these Calendar cases which are triable by him to the Second Class Magistrate for the purpose of being committed to the Sessions Court was not proper. It is enough in this connection to refer to *Chinnaswami Nadar v. Emperor* (1933) M.W.N. 550 and *Majji Paidanna v. Emperor* (1934) M.W.N. 272. The other reason given by the learned Sub-Divisional Magistrate, namely, that the facts of the Calendar cases are complicated is certainly not a reason which can possibly justify the order. If the facts are complicated, the First Class Magistrate must be more competent to deal with them than the Second Class Magistrate, and in any case it is not alleged that the facts are too complicated for the First Class Magistrate to disentangle. The learned Sub-Divisional Magistrate had really no power to direct the Sub-Magistrate to treat the Calendar cases which were triable by a First Class Magistrate as Sessions cases. If he thought that those cases ought to be tried by the Court of Sessions he should have proceeded himself to commit them to the Sessions Court under Section 347, Criminal Procedure Code. His order practically amounts to a refusal to exercise his jurisdiction and to perform his duty. The learned Sub-Divisional Magistrate makes a passing reference to the extra Revenue work entailed upon him and the fact that he has no time for criminal work, and it is possible that it was this reason that led him to send back to the Sub-Magistrate P.R.C. No. 1 of 1937, which his predecessor has taken up. The learned Sub-Divisional Magistrate must know that, whether the facts are complicated or not, the cases which are triable by him must be heard by him and the work should not be transferred in the manner in which it has been done to the Sub-Magistrate.

2. The order so far as it relates to the transfer of C.C. Nos. 63 and 65 of 1937 is set aside. The Sub-Divisional Magistrate must get back the records in these cases from the Sub-Magistrate and dispose of the cases himself according to law.

