

In Re: Murugappa thevan and ors.

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SooperKanoon Citation : sooperkanoon.com/789638

Court : Chennai

Decided On : Oct-31-1935

Reported in : (1936)70MLJ244

Appellant : In Re: Murugappa thevan and ors.

Judgement :

ORDER

King, J.

1. The petitioners in this revision case are four persons who were accused before the Sub-Magistrate of Mannargudi of having beaten the complainant and extorted from him a promissory note for Rs. 120. Charges were framed against them, after the hearing of the prosecution evidence, under Sections 384 and 352 read with Section 34 of the Indian Penal Code. Defence witnesses were examined and arguments heard, and the case was finally posted for judgment on the 31st of July last. On the 30th of July the Magistrate who had heard the case was suddenly transferred to Tiruvadamarudur. The new Magistrate, I understand, took up the case on the 31st of July and asked the accused whether they wished for a de novo trial, and a trial de novo was requested. The Magistrate seems to have referred to the Additional District Magistrate of Tanjore as to what should be done. The Additional District Magistrate thereupon transferred the case to Tiruvadamarudur so that the judgment might be pronounced by the Magistrate who had actually heard the arguments. When the case was once more before him that Magistrate

did not pronounce judgment but posted the case for fresh argument and then came to the conclusion that there was prima facie material for a charge of dacoity as the four accused were said to have been accompanied by persons not before the Court. He thereupon resolved to commit the accused to Sessions. It is against this order that this petition has been filed.

2. The order is attacked as without jurisdiction on two grounds; firstly, because the Sub-Magistrate of Tiruvadamardur had no jurisdiction to do anything at all in the case as it could not legally have been transferred to him by the District Magistrate, and, secondly, that, if he had jurisdiction, his only course was to proceed to pass judgment on the charges which he had himself framed, that when he framed charges under Sections 384 and 352 he had in effect discharged all the accused of the offence of dacoity and without some order of a superior court directing fresh enquiry he had no right to go back upon his previous decision. The first of these arguments depends upon the language of Section 528 of the Criminal Procedure Code. Section 528(2) runs as follows:

Any Chief Presidency Magistrate, District Magistrate, or Sub-Divisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same

3. It will be seen from the language of this Sub-section that the only intention recognised by the legislature for a transfer is that the Court to which the case is transferred should inquire into or try it. The question then arises whether the pronouncing of judgment amounts to any part of the inquiry or trial. This matter has already been decided, in somewhat similar circumstances, by two learned Judges of this Court. In *The Public Prosecutor Madras v. Chockalinga Ambalam* I.L.R.(1928) 52 Mad. 355 : 1928 56 M.L.J. 216 it was held by Reilly, J. in circumstances similar to these, namely, when everything had been done except the actual pronouncing of judgment, that the accused person had no right within the meaning of Section 526(8) of the Criminal Procedure Code to apply for adjournment in order to get a transfer of the case, the reason being that with the

conclusion of the argument, there being nothing left save the pronouncing of judgment, the trial had come to an end. In *Bhogole Chinna Somayya In re* I.L.R.(1928) 52 Mad. 355 : 1928 56 M.L.J. 216 the Magistrate had been transferred when his judgment was ready but not actually pronounced, and the new Magistrate refused the application by the accused for a de novo trial; it was held by Burn, J. that the trial of the case was over as soon as the Magistrate had determined the issue of the guilt or innocence of the accused and the mere pronouncing of the judgment was not a part of the trial. It seems clear from these decisions, with which I respectfully agree, that the pronouncing of judgment is not a part of the trial; and it seems to me to follow from the language of Section 528(2) that, however convenient it may be in practice to do what the Additional District Magistrate has done, there is no warrant for this procedure in the Criminal Procedure Code and it must be held that the transfer is not legal. It is unnecessary in this view of the case to consider the second argument.

4. I must set aside the order of the Sub-Magistrate of Tiruvadamardur on the ground that the transfer of the case to his file is illegal. I must also set aside the order of transfer and remand the case to the Stationary Sub-Magistrate of Mannargudi for disposal according to law.