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In Re: C. Raghava Menon

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Court : Chennai

Decided On : Sep-06-1940

Reported in : AIR1941Mad250; (1940)2MLJ748

Appellant : In Re: C. Raghava Menon

Judgement :
ORDER

Lakshmana Rao, J.

1. The accused was the clerk of the Official Receiver of Calicut and three sums of Rs. 35 were received by him during the absence of the Official Receiver on 3rd October, 1939, 2nd November, 1939 and 2nd December, 1939. They were entered in the accounts on 7th October, 21st November and 18th December and on the complaint of the Official Receiver the police filed a charge sheet against the accused for an offence under Section 409 of the Indian Penal Code. The facts alleged did not warrant a charge under Section 409 of the Indian Penal Code and the Sub-Divisional Magistrate framed a charge under Section 403 of the Indian Penal Code for temporary misappropriation of the amount. The accused denied the offence and pleaded that the delay in making the entries and paying the amount over to the Official Receiver was due to oversight due to heavy work but the plea was not accepted and the accused was convicted and sentenced to pay a fine of Rs. 17 on each count.

2. The case has been referred by the District Magistrate for enhancement of sentence, but the evidence does not justify the conviction. The accused was not in difficulties and as found by the Sub-Divisional Magistrate there was no evidence that he used the amount. It has been repeatedly held that mere retention of money would not warrant a conviction under,S. 403 of the Indian Penal Code and the accused was' subsequently reinstated as the result of a departmental enquiry. The conviction is therefore set aside and the fine if levied will be refunded.

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