

In Re: Achanta Ramabrahmam and ors.

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Court : Chennai

Decided On : Jul-24-1944

Reported in : AIR1944Mad503

Appellant : In Re: Achanta Ramabrahmam and ors.

Judgement :

ORDER

Byers, J.

1. The only substantial question which arises in these criminal revision cases is whether the Special Magistrate functioning under Ordinance 2 of 1942 acted illegally in continuing to try the case before him after he had tendered a pardon under Section 337, Criminal P. C. The argument is that as the pardon was tendered by the Magistrate by whom the case was being tried, he had no other option but to commit the case to the Sessions Court or the Special Judge under Clause (2A) of Section 337 of the Code. The learned Public Prosecutor meets this argument with the contention that under Section 11 (1) read with Section 6 (1) of ordinance 2 of 1942, the warrant procedure prescribed in the Criminal Procedure Code is made applicable to the trial of special cases under the Ordinance subject to the limitation prescribed by Section 27 of the Ordinance, which is in these words:

The provisions of the Code and of any other law for the time being in force, in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Ordinance, shall apply to all matters connected with, arising from or consequent upon a trial by special criminal Courts constituted under this Ordinance.

Under Section 6(1) of the Ordinance, a Special Judge takes cognizance of an offence without the accused being committed for trial in the ordinary way and, therefore, to this extent Clause (2A) of Section 337, Criminal P. C, is inconsistent with the provisions of the Ordinance. To hold otherwise would mean that no trial under the Ordinance could take place according to its provisions whenever a pardon was tendered during the course of the trial. Under Ordinance 19 of 1943 a sentence passed by a Special Magistrate in the exercise of his powers under Ordinance 2 of 1942 shall continue to have effect

as if the trial at which it was passed had been held in accordance with the Code of Criminal Procedure by a Sessions Judge or an Assistant Sessions Judge or a Magistrate of First Class, respectively exercising competent jurisdiction under the said Code.

The argument that the Special Magistrate should have proceeded under Sub-section (2a) after tendering a pardon has to be rejected. The second point taken is that the conviction on the evidence of one approver supported by that of a second approver is illegal; but this is opposed to the decision of the Pull Bench in *In re Rajagopal* A.I.R. 1944 Mad. 117. In the present case the corroborative evidence did not come from another approver in the strict sense of the word, but from an accused against whom the case was withdrawn and who was later placed in the dock, examined and cross-examined on oath as a prosecution witness in the usual way. In the case cited, it was held that an approver's evidence is admissible under the Evidence Act, and, if accepted, is sufficient to support a conviction, but whether it should be accepted without corroboration is quite a different matter and that unless the case is a very exceptional one, an accomplice's evidence should not be accepted as being sufficient. In the present case there is the evidence of P.W. 9, who, although not an approver, may be said to be in the position of an

approver, or a co-accused; but in the light of this decision it cannot be said that the conviction is illegal. The evidence of the approver and the corroborating witness has been carefully considered by the Special Magistrate and the learned Sessions Judge. In an attempt to get over this difficulty, Mr. Lakshmayya has argued that the ease is not such an exceptional one to warrant the acceptance of an approver's evidence, and he has attempted to test the findings of fact by both the lower Courts; but these findings are not open in revision.

2. Finally the severity of the sentences has been challenged but it cannot be said that for sabotage of the kind committed by the accused the sentences are in any way excessive. In any event, the major portions of the sentences have been worked out and there is no necessity for any interference. Both the petitions are dismissed.

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