

The Public Prosecutor Vs. Atchamma and ors.

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SooperKanoon Citation : sooperkanoon.com/792748

Court : Chennai

Decided On : Feb-05-1947

Reported in : AIR1948Mad487; 1949CriLJ30; (1947)1MLJ197

Appellant : The Public Prosecutor

Respondent : Atchamma and ors.

Judgement :

ORDER

Yahya Ali, J.

1. This batch of revision petitions involves a common point which can be disposed of by one judgment. Two sets of statements are said to have been made by the respective respondents in all these cases which are contradictory and the trial Magistrate directed the making of a complaint by means of an order under Section 476 of the Criminal Procedure Code. That order was reversed on appeal by the Sessions Judge, Cuddappah. The learned Sessions Judge came to the conclusion on a scrutiny of all the facts in evidence that it is not expedient in the interests of justice to prosecute the respondents for the alleged offence of giving false evidence. With that finding based as it is on evidence I entirely agree.

2. The learned Public Prosecutor points out that in the course of the judgment, the learned Sessions Judge has committed two errors of law which in the interests of the administration of justice should not be allowed to remain unrectified. The first

question relates to the conclusion of the learned Judge that since there was no express finding of the trial Court that one of the two statements was false the complaint was vitiated. I agree with the Public Prosecutor that this view of the law is contrary to the provisions of Section 236 of the Code of Criminal Procedure and the principles underlying prosecutions under Section 193 of the Indian Penal Code. In fact illustration (b) to Section 236 of the, Code of Criminal Procedure shows that even if it cannot be proved which of the contradictory statements is false a person may be charged and convicted in the alternative of intentionally giving false evidence at one stage or another.

3. The second point mentioned by the learned Public Prosecutor is based upon the view propounded by the learned Judge relying upon the decision in Haricharan Singh v. Emperor I.L.R.(1900) Cal. 455 that the Sub-Divisional Magistrate was not then competent to administer an oath to the respondent when he recorded the first set of statements. The learned Judge's argument is that the information was collected with a view to taking action under Section 190(1)(c) of the Code of Criminal Procedure and that no evidence could be recorded unless the requisite intimation had been given under Section 191 of the Code of Criminal Procedure to the accused that he was entitled to have the case tried by another Court. Hari charan Singh v. Emperor I.L.R.(1900) Cal. 455 is a case where the person examined was the accused and perhaps the case may be distinguishable on that ground, but I do not consider it necessary to decide this point as I agree with the finding of the learned Judge that it is not expedient in the interests of justice to make a complaint against the respondents.

4. The revision petitions are dismissed.