

In Re: Malai and ors.

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Court : Chennai

Decided On : Aug-18-1937

Reported in : AIR1937Mad944; (1937)2MLJ725

Appellant : In Re: Malai and ors.

Judgement :

ORDER

King, J.

1. This reference is made on the assumption that the facts are governed by a decision of my own reported in Rajaratnam Pillai, In re : (1936)70MLJ340 . The facts are obviously distinguishable. In Rajaratnam Pillai, In re : (1936)70MLJ340 , I had to deal with a case in which the Magistrate had not only taken cognisance of an offence triable only under Chapter XX of the Code but had actually applied Sections 242 and 244 and taken evidence. In the present case though the Magistrate had issued summons to the accused for an offence under Section 426 only he did not apply Section 242 when the accused was brought before him, but informed him then and there that on reconsideration he held that other offences also were disclosed by the complaint, and proceeded from that moment to apply Section 252.

2. It is no doubt stated with some lack of precision in Rajaratnam Pillai, In re : (1936)70MLJ340 that when once a Magistrate has 'taken cognisance of 'an

offence which is triable only according to the procedure applicable to summons cases, etc., but the argument is clear that I was concerned solely with Chapter XX and the provisions of Section 246. A situation such as has now arisen was not then contemplated and was obviously not being considered. I accordingly hold that the decision in Rajaratnam Pillai, In re : (1936)70MLJ340 does not and cannot apply to the facts of this case.

3. That a Magistrate has power to change his mind in regard to the exact offences which a complaint discloses before he begins to enquire into the case cannot be denied on general principles--and even if it be argued that in the present case he has impliedly dismissed a complaint under other sections of the Penal Code than Section 426 he still has power to re-entertain a complaint on the same facts without the need of any action by any superior Court. (Vide Emperor v. Chinna Kaliappa Gounden (1905) 16 M.L.J. 79: I.L.R. 29 Mad. 126 and Ponnuswami Gounden, In re (1931) 62 M.L.J. 469: I.L.R. 55 Mad. 622

4. In the result I am unable to accept the learned Magistrate's reference and must decline to interfere.

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