

Palaniandy Gounden Vs. Emperor

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Court : Chennai

Decided On : Dec-08-1908

Reported in : 1Ind.Cas.54

Judge : Miller and ;Sankaran Nair, JJ.

Appellant : Palaniandy Gounden

Respondent : Emperor

Judgement :

ORDER

1. We agree with the view taken of Section 350 of the Code in the recent decisions of the Calcutta High Court in *The Deputy Legal Remembrancer v. Upendra Kumar Ghose* 12 C.W.N. 140; 6 Cr. L.J. 434, and in *Mohesh Chandra Saha v. Emperor* 35 Cal. 457;. 7 Cr. L.J. 220, where the learned Judges held that the words of that section are applicable to cases in which the case under enquiry or trial is withdrawn from one Magistrate, who therefore ceases to exercise jurisdiction therein, and is transferred to another. In this view the Deputy Magistrate's procedure in the present case was governed by Section 350, and he was not bound to re-hear all the prosecution witnesses. Nor was the accused, in our opinion, entitled by virtue of proviso (a) to Section 350 to require a re-hearing of the evidence.

2. The case before the Magistrate was a 'register case or preliminary enquiry into an accusation of an offence triable exclusively by a Court of Session. It was not in our opinion a trial before the charge is framed, but was an enquiry and therefore not provided for by proviso (a) to Section 350. Even if the case were treated by the Magistrate as a 'warrant case the accused is not prejudiced by this construction of the section, because by sector 256 of the Code as soon as a charge is framed he can re-call for cross-examination all the prosecution witnesses whose evidence has been taken; and therefore should the proceedings become a trial he has a right equivalent to that of demanding a de novo enquiry.

3. We dismiss the petition.

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