

In Re: S. Kondareddi and anr.

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Court : Chennai

Decided On : Apr-26-1912

Reported in : (1914)ILR37Mad112

Judge : Benson, J.

Appellant : In Re: S. Kondareddi and anr.

Judgement :

ORDER

Benson, J.

1. The question raised in this petition is whether it is competent to a Magistrate under Section 94, Criminal Procedure Code, to issue a summons to an accused person to produce a document or other thing, the production of which might tend to incriminate him.
2. The words of the section are general. No exception is made in favour of an accused person, though several exceptions are specified in Clause (3) of the section.
3. The question was considered at length in Mahomed Jackariah & Co. v. Ahmed Mahomed (1888) 15 Calc. 109 and it was held that it was clearly the intention of the Legislature to make Section 94 applicable to an accused person, notwithstanding that this involved a departure from the general principle of the

English law. A similar view was apparently taken in *Nizam of Hyderabad v. Jacob* (1882) 19 Calc. 52.

4. A contrary view was taken in *Ishwar Chandra Ghoshal v. The Emperor* 12 C.W.N. 1016 in which the learned Judges referred to Sections 342 and 343, Criminal Procedure Code, which were not referred to in the two Calcutta cases noted above.

5. In *Ishwar Chandra Ghoshal v. The Emperor* 12 C.W.N. 1016, however, no one appeared to support the Magistrate's action and the learned Judges did not refer to the previous Calcutta cases.

6. The Magistrate always has the power to issue a search warrant to obtain the production of a document or other thing in possession of the accused.

7. The issue of a summons is a milder means of attaining the same and I am of opinion that the ruling in *Mahomed Jackariah & Co. v. Ahmed Mahomed* (1888) 15 Calc. 109 should be followed.

8. I therefore dismiss the petition.

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