

In Re: Chelliah Servai

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Court : Chennai

Decided On : Apr-02-1948

Reported in : 1949CriLJ227; (1948)2MLJ267

Appellant : In Re: Chelliah Servai

Judgement :

ORDER

Govinda Menon, J.

1. In Muppana Appana v. Emperor 1947 M.W.N. (Crl.) 101, Horwill and Shahabuddin, JJ., have held that when a person is charged and tried for an offence under Section 396, Indian Penal Code, he can be validly and legally convicted of a minor offence under Sections 395 and 397, Indian Penal Code, even though the offence under Section 396, Indian Penal Code, was triable with the aid of assessors and that under Section 395, Indian Penal Code or 397, Indian Penal Code, only with a jury. In my opinion an offence under Section 395 or 397, Indian Penal Code, is a minor offence within the meaning of Section 238, of the Criminal Procedure Code, when considered in relation to an offence under Section 396, Indian Penal Code. Such being the case, the accused who already had the benefit of acquittal for an offence under Section 396, Indian Penal Code, on the same set of facts cannot now be tried and convicted for an offence under Section 395 or 397, Indian Penal Code. Section 403, Criminal Procedure Code, is a bar to a fresh trial. The reference is accepted and the accused is discharged.

2. This conclusion will necessarily entail the opinion that the conviction of the others of the offence under Section 395 or 397 on the second trial is illegal. The attention of the Provincial Government will be drawn to the circumstances for appropriate action under Section 401 of the Criminal Procedure Code.

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