

Kaliappan Vs. Kaliappan and ors.

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Court : Chennai

Decided On : Oct-12-1960

Reported in : AIR1961Mad354; 1961CriLJ245

Judge : Srinivasan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 242 and 342

Appeal No. : Criminal Revn. Case Nos. 1095 and 1200 of 1960 and Cri. Revn. Petn. Nos. 1064 and 1169 of 1960

Appellant : Kaliappan

Respondent : Kaliappan and ors.

Advocate for Def. : Fyzee Mahmood, Adv in CrI. R.C. No. 1200 of '60, ;G. Gopalaswami and ;V. Gopinathan, Adv. in CrI. R.C. No. 1095 of '60

Advocate for Pet/Ap. : Fyzee Mahmood, Adv in CrI. R.C. No. 1095 of '60, ;G. Gopalaswami and ;V. Gopinathan, Adv. in CrI. R.C. No. 1200 of '60;M. Narayanaswami, Adv. for ;Public Prosecutor

Judgement :

1. What has happened in this case is that the learned District Magistrate of Salem in hearing an appeal preferred against convictions under Sections 323 and 447 I. P. G. set aside the convictions and sentences and remanded the case for fresh trial. This in his opinion became necessary for the reason that a grave illegality

had been committed in the trial of the case and that the trial Magistrate had followed a procedure which was not warranted by law.

He thought that the Magistrate, after finishing examination of four prosecution witnesses, immediately examined two defence witnesses without questioning the accused under Section 342 Cr. P. C. and that the failure of the Magistrate to question the accused under Section 342 Cr. P. C. vitiated the convictions. It seems to me that in coming to this conclusion the learned District Magistrate was wholly in error. That this was a summons case must have been perfectly obvious and though Section 342 Cr. P. C. in the enabling part of that provision would apply equally to a summons case, the Magistrate is not called upon mandatorily by any provision of the Code to question the accused either generally or on any facts appearing in the evidence against him after the prosecution witnesses are examined and before the defence witnesses are called.

The latter part of Section 342 (1) which is mandatory in its scope clearly applies to warrant cases, that is, cases triable under the warrant procedure. The framing of the charge and the questioning of the accused before the charge is framed takes place on the first appearance of the accused before the Magistrate in the case of summons cases. This is so provided for by Section 242 Cr. P. C. Consequently, there does not appear to be any need for the examination of the accused in the manner set out in Section 342 in the trial of a summons case. When that is not contemplated by the Code, the District Magistrate was clearly in error in thinking that the trial was vitiated by the non-examination of the accused under that provision of the law.

2. It has been argued, on behalf of the third accused in particular, that when the question was put to him under Section 342, what he stated was that when he went alone to Moolakkadu, the complainant who was ploughing, came; and he and his men beat him (the third accused). It is stated by the learned counsel that there was another counter case in connection with this alleged beating. It is suggested that more particularly for the reason that the question put by the Magistrate to these accused persons did not specifically draw their attention to the alleged offence under Section 447, in the special circumstances relating to the third

accused, it would have been proper for the Magistrate to have questioned him in this regard drawing his attention to the allegation that the offence of criminal trespass was also being charged against him.

It may also be mentioned that after the close of the examination of the witnesses on both sides, the first accused was also generally questioned, more particularly with regard to the factum of possession of the land in dispute. Apparently, the trial Magistrate wanted to clear up any doubts on the question of criminal trespass. The learned counsel accordingly argues that the other accused, particularly, the third accused, should also have been questioned in this connection.

3. As far as I can see, the question that has been put to all these accused, though it mentions Section 323, clearly specifies that these accused persons entered upon the land in the possession of P. W. 1 and beat him. The fact that Section 447 of the offence of criminal trespass is not in so many words specified does not matter. This charge also has been brought to the notice of the accused and that to my mind is sufficient.

4. In the view that I have taken that the trial has not been vitiated by the non-examination of the accused in the manner required by Section 342 Cr. P. C. it follows that the order of the District Magistrate setting aside the conviction and remanding the case for fresh trial is incorrect. That order is set aside. The appeal is, therefore, directed to be restored to file and heard on merit.

Cr. R. C. No. 1200 of 1960 : There is no need to interfere.

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