

In Re: Kunju Iyer

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Court : Chennai

Decided On : Jan-16-1946

Reported in : AIR1946Mad496; (1946)1MLJ372

Appellant : In Re: Kunju Iyer

Judgement :

ORDER

Kuppuswami Aiyar, J.

1. The petitioner was convicted by the joint Magistrate of Pollachi for an offence punishable under Section 409 of the Indian Penal Code. On appeal the learned Sessions Judge was of opinion that the facts alleged did not constitute an offence punishable under Section 409 and accordingly acquitted the petitioner but directed that the papers be sent to the lower Court for a charge being framed' under Section 420 and evidence being let in. It is urged before me that the proceedings should be quashed in view of the provisions of Section 403 of the Code of Criminal Procedure. Sub-section (1) of that section runs thus:

A person who has been once tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236, or for which he might

have been convicted under Section 237.

In this case it is not disputed that the first Court itself could have convicted the petitioner for an offence punishable under Section 420 even though no charge under that section had been framed. It is hence stated that this is a case in which he should have been convicted by reason of the provisions of Section 237 of the Criminal Procedure Code and therefore the acquittal in this case would be a bar to a further trial in respect of an offence under Section 420 of the Indian Penal Code. What was done in this case was that instead of the appellate Court itself finding him guilty under Section 237, it wanted to give an opportunity to the petitioner to have a fresh trial after framing a fresh charge and let in evidence and that was within the powers of the Court. What has been done was the exercise of the powers under Section 237 with this addition, namely, that certain privileges were sought to be given to the accused by ordering a fresh charge to be framed and a fresh trial. The appellate Court as a Court of error found that the first Court had committed a mistake in convicting the petitioner of an offence punishable under Section 409 and at the same time exercised the powers which the first Court could have exercised if it had itself noticed the error and acted. I hence do not think that this is a case of a fresh prosecution or a fresh trial. When the error was noticed by the Court, it corrected the error and exercised the same powers as the first Court could have exercised if it had noticed the error.

2. My attention is drawn to the decision in *Rex v. John McIver* : (1936)70MLJ635 . But that case has no application to the facts of this case, at any rate, that case can be distinguished from the present case. In that case there was an acquittal by reason of compounding and the matter rested there. It was taken in appeal and the appellate Court confirmed the order and it did not interfere. But after having accepted the acquittal, the Court directed on the same facts a prosecution for a different offence because that was prayed for in the original complaint. That was sought to be prohibited by Section 403 of the Code of Criminal Procedure, whereas in this case the case had not come to an end. The case ended in a conviction which was upset by the appellate Court. While acquitting the petitioner, the appellate Court acting under Section 237 observed that the alternative charge should be inquired into. I therefore do not think the decision in *Rex v. John McIver*

: (1936)70MLJ635 applies to the facts of this case. In these circumstances I do not think I will be justified in interfering with the order of the appellate Court and quashing the further proceedings. The petition is dismissed.

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