

In Re: I.V. Subba Rao

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Court : Chennai

Decided On : Mar-16-1949

Reported in : 1950CriLJ156; (1949)1MLJ600

Appellant : In Re: I.V. Subba Rao

Judgement :

ORDER

Somasundaram, J.

1. In this case the petitioner has been convicted under Section 161, Indian Penal Code and sentenced to one and a half month's rigorous imprisonment by the Additional First Class Magistrate, Kakinada, and it was confirmed on appeal by the Sessions Judge of East Godavari.

2. The petitioner who was a station-master at Dwarapudi was charge-sheeted by the Special Police Establishment for having accepted an illegal gratification of Rs. 10 on 23rd April, 1947, from P.W. 2 for booking two iron machinery parts to Bezwada. It is unnecessary to go into the details of the case as the main point on which the revision was argued is one of sanction. The sanction which is required for prosecuting the petitioner under Act II of 1947 is contained in Ex. P-4 which is as follows:

No. P. 426. Madras, 22nd July, 1947 To

The Deputy Superintendent of Police,
Special Police Establishment, Vepery, Madras.

Dear Sir,

Ref: I.V. Subba Rao--Station-master, Dwarapudi.

With reference to your letter C. No. 437 SPE/M/47 of the 4th instant, sanction is afforded to prosecute the abovenamed.

Yours faithfully,

(Signed)

Chief Commercial Manager.

The letter referred to in that sanction has not been filed in Court, nor the facts on which the sanction was obtained spoken to by the Inspector in this case. No evidence has been let in to show what facts were placed before the sanctioning authorities for the purpose of obtaining sanction. In *Gokulchand Dwarkadas v. The King* (1948) 1 M.L.J. 243 : L.R. 75 IndAp 30 (P.C.), their Lordships of the Privy Council have held that it must be proved that the sanction was given in respect of the facts constituting the offence charged and it is plainly desirable that the facts should be referred to on the face of the sanction; but if it is not so shown, the prosecution must prove by extraneous evidence that those facts were placed before the sanctioning authority. Sanction to prosecute is a matter of importance which constitutes a condition precedent to the institution of the prosecution and the Government have absolute discretion to grant or withhold the sanction and they held in that particular case that the sanction which was in terms similar to the one given here was not a valid one. In this case, as already stated, the sanction on the face of it does not contain the facts constituting the offence charged nor was there any evidence given that those facts were placed, before the sanctioning authority. I called for a report from the lower Court whether the letter referred to in the sanction letter was filed in evidence in Court. The report is that the letter does not seem to have been filed or produced in Court. The Public Prosecutor applied to let

in evidence of that letter in this Court but I do not think that in a matter in which there had been such serious lacuna in the prosecution it is advisable to allow it to fill in the lacuna in the revisional Court by letting in evidence here. The sanction in this case is on all fours with the sanction in the Privy Council case. Following the ruling of the Privy Council, I hold that in this case there has been no valid sanction and the lower Court has therefore no jurisdiction to take cognizance of the offence. The conviction and sentence of the petitioner are set aside and he is acquitted.

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