

**Janardhanam Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/798520](http://sooperkanoon.com/798520)

**Court :** Chennai

**Decided On :** Jul-18-1930

**Reported in :** AIR1930Mad977; 129Ind.Cas.74

**Appellant :** Janardhanam

**Respondent :** Emperor

**Judgement :**

ORDER

**Pandalai, J.**

1. This is an application to revise the conviction of the petitioner by the Third Presidency Magistrate for an offence under Section 408, I.P.C., for which he was sentenced to three months' rigorous imprisonment. The ground alleged is that the trial before the Magistrate is vitiated by the illegality that after the charge was framed and the accused had pleaded 'not guilty,' the question whether he wished to further cross-examine the prosecution witnesses was put to him on the same day and that because the petitioner was undefended this was an illegality which could not be cured.

2. The facts are that after the prosecution witnesses were examined on 5th June 1930 the accused was charged and he pleaded 'not guilty.' The Magistrate's record then contains the following:

He (the accused) wants to further cross-examine the prosecution witnesses. The accused is undefended. I therefore have not adjourned the case to another date to put this question.

3. The case was accordingly adjourned to a subsequent date on which date the prosecution witnesses were admittedly further cross-examined by the petitioner himself, he not having engaged any lawyer. He called no evidence, and on the evidence before the Court he was convicted and sentenced to three months' rigorous imprisonment.

4. The learned advocate for the petitioner relies upon a decision of Jackson, J., in *Raju Achari*, In re A.I.R. 1927 Mad. 78 for his argument that on the above facts the trial was illegal because the question was put to the petitioner whether he wished to further cross-examine the prosecution witnesses on the same day the charge was framed. The decision cited is not an authority for this case. In that case the original papers of which I have called for and examined, a Bench of Honorary Magistrates after framing a charge under Sections 323 and 114 questioned the accused whether he wished to further cross-examine the prosecution witnesses, and he said No.' He had no vakil. The Bench recorded no reasons for putting the question the same day. Upon these facts the learned Judge held that the trial was vitiated by illegality and that it was one which could not be cured. In that case the Court recorded no reasons whatever for asking an undefended accused whether he wished to further cross-examine the prosecution witnesses on the same day that he was charged, whereas Section 256 explicitly lays down that where the Magistrate wishes to put that question the same day, he must record in writing the reasons for it. The omission to record reasons was thus clearly an illegality. In this case there is no such illegality because the Third Presidency Magistrate was clearly aware of what his duties were under Section 256, and he says that the accused was undefended and that he therefore did not adjourn the case to another date to put the question. But Mr. Venkataraghavachariar says that it is no reason at all. Whether that be a good reason or not, to which I will refer presently, there is no illegality in this case of failure to record reasons, and the decision of Jackson, J., is therefore not applicable. Whether the reason recorded is or is not sufficient, the decision cited does not say, nor could it possibly say, that in no

circumstances can the question be put to an undefended accused on the same day as he is charged. On the contrary all that the decision says, and here it is merely carrying out the clear words of the section, is that where the question is put on the same day the Court must record the reason for so doing, and this is so whether the accused has a vakil or has no vakil. All that I understand Jackson, J., to say is that where the accused has a vakil there may usually be less likelihood of his being prejudiced if the question is put on the same day. But he has clearly recognized that even where the accused has no vakil all that is required is that the Magistrate must have a reason for putting the question the same day and also record it. Whether the reason given by the Magistrate in this case was itself sufficient or not, that was a matter entirely dependent upon the circumstances.

5. The Magistrate says that the accused was undefended and therefore it was that he put the question the same day. The meaning of that I consider to be that the man had never engaged a vakil and did not appear to want to do so and it would purely be a waste of time for him, that is the accused, to ask him to come again to answer a question which he was prepared to answer at once without consulting any vakil because he had no intention of engaging one. That this was the case is shown by the fact that the accused did not answer that he did not want to further cross-examine; on the contrary he said that he did want to further cross-examine, and by the fact that, when on the subsequent date the prosecution witnesses appeared again, they were recross-examined by the petitioner himself. In these circumstances, I think the Magistrate was perfectly justified in thinking that the petitioner not having a vakil, and not wanting to have one, was a perfectly good reason why the question might, without any prejudice to him, be put the same day. I therefore think that there has been no illegality in the case, and therefore it does not arise to decide whether, if there had been one, it would have been curable. Mr. Venkataraghavachariar urges that in the circumstances of the case the sentence imposed is too severe. The petitioner is a young man. The sum involved is small. He has already been in jail for six weeks. The sentence is reduced to the period already undergone.