

(Peria) Kalathi Mudali Vs. Venkatesa Mudali and ors.

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SooperKanoon Citation : sooperkanoon.com/798795

Court : Chennai

Decided On : Apr-18-1932

Reported in : AIR1933Mad277

Appellant : (Peria) Kalathi Mudali

Respondent : Venkatesa Mudali and ors.

Judgement :

ORDER

Walsh, J.

1. The accused in this case were convicted by the trial Court of an offence under Section 352, I.P.C., and sentenced to a fine of Rs. 25 each, out of which Rs. 25 was ordered to be paid as compensation to P.W. 1, the petitioner. On appeal they were acquitted. This revision petition is against the acquittal, the only ground being that the petitioner was not in a position to deal effectively with the pleas raised for the accused in appeal.

2. The petitioner has put in an affidavit in which he says that the notice of appeal was served on him on 15th November 1931, at about 12 noon, at his village of Tirumalpur which is three miles away from Pallur Railway Station; Sholingur camp was 9 miles from the Sholingur Railway Station. He left his village for Sholingur by 6-30 p.m. train and reached Sholingur Station at 11 p.m. He took a bus to Sholingur town at 6 a.m. next morning and reached Sholingur town at 7 a.m. He

represented to the Sub-divisional Magistrate that he could not bring his advocate who had his record owing to the short notice; nevertheless adjournment was refused and the appeal was heard and disposed of. Another ground taken in the petition was that notice of the appeal was not sent under Section 422, Criminal P.C., to the officer appointed by the Government. There has been no objection by the Government in this case. As regards the latter point *Devendra v. Shettappa* AIR 1923 Bom. 261 has been quoted to show that when the District Magistrate does not raise any objection to the procedure, the High Court will not interfere in revision. The learned advocate for the petitioner relies on *Bharasa Naw v. Sukhdeo* AIR 1926 Cal 1054. That was a case somewhat similar to the present case, where compensation was ordered to be paid to the complainant; but in that case he had no notice at all. Duval, J., says:

It is clear that no notice to the officer appointed by the Local Government was given as required by Section 422, Criminal P.C. This alone is good reason for ordering the appeal to be re-heard.

3. It does not appear from the judgment whether the Government had raised any objection to the omission to give notice. If they had not, this opinion is contrary to that expressed in *Devendra v. Shettappa* AIR 1923 Bom. 261. In *P. Kanakkan v. Amir Bi* AIR 1924 Mad 837 *Venkatasubba Rao, J.*, held that the fact that notice of the appeal was not served on the complainant or on the officer appointed under Section 422, Criminal P.C., was no ground for interfering with an order of acquittal, where no injustice had been occasioned. It does not appear from the report whether the petitioner in that case had been awarded compensation or not. It is well established that the Code does not require notice to be issued to the complainant: vide *Behari Majhi v. Hari Majhi* : AIR1932 Cal61 . It has no doubt been held advisable to issue such notice when compensation has been awarded to the complainant: vide the remarks in *Bharasa Naw v. Sukhdeo* AIR 1926 Cal 1054, where a reference is made to certain Madras cases which deal with cases of compensation under Section 250, Criminal P.C. In *In re Chemikkala Chinna Bali* (1915) 31 IC 176 the case was referred by the Sessions Judge owing to want of notice. It has to be noted that although Section 436, Criminal P.C., has now been amended making notice to an accused person who has been discharged under

Section 253 necessary before the order of discharge is set aside, no such provision has been made in Section 250 of the amended Code.

4. The facts of this case are that the petitioner did appear in person and was heard, as will be seen from the heading of the judgment. According to him he got notice of the appeal about noon on 15th November 1931. His village is three miles from Pallur Railway Station. Assuming that he could not get the train at 12'37, there was one at 18'29 which would have brought him to Katpadi at 21-10 hours. There was another at 19-53 which would have brought him to Katpadi at 23-45. Although there appears to be no connexion by these trains from Katpadi to Vellore yet the distance is only 3 or 4 miles by road and the petitioner could almost certainly have got a bus or cart to Vellore. Returning to Katpadi he could have got a train at 3-17 reaching Sholingur at 4-3. So that, it is by no means clear that he could not have at least brought his papers to the Court if not the pleader. As regards *In re Arjun Tathoo* AIR 1920 Bom. 318 and *Gulai Jha v. Emperor* AIR 1928 Pat 277, which are quoted in this connexion, I do not think they are applicable in the present case. In the first case the appellant himself had not been given proper notice of hearing of the appeal and the appeal was dismissed. In the second the party was asked to cross-examine a witness at 6-30 p.m. and his request for an adjournment was refused. It has not been pointed out to me that there is any mistake in the judgment. The offence is a petty one and this Court will not lightly set aside an acquittal. I see no reason to interfere, in revision. The petition fails and is dismissed.