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In Re: Arumugha Mudaliar and ors.

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Court : Chennai

Decided On : Oct-31-1947

Reported in : (1948)1MLJ81

Appellant : In Re: Arumugha Mudaliar and ors.

Judgement :
ORDER

Govinda Menon, J.

1. These revisions arise out of the orders passed by the learned Additional District Magistrate, Trichinopoly, setting aside the orders of discharge of the various petitioners herein passed by the Committing Court, the Special First Class Magistrate of Trichinopoly in preliminary register cases on his file. The point for consideration is the same in all the cases and therefore I propose to deal with them by a common judgment. These various petitioners and a number of others were proceeded against under the rioting and mischief sections of the Indian Penal Code and a large body of oral evidence was let in before the First Class Magistrate. On a consideration of the evidence before him, the First Class Magistrate found that there was no prima facie case against these accused persons which would warrant the committal of them to take their trial before the Court of Session.

2. The prosecution preferred revision petitions under Sections 435 and 437, Criminal Procedure Code, to the District Magistrate, Trichinopoly and the Additional District Magistrate who heard the revisions took a different view from that of the First Class Magistrate, set aside the orders of discharge and has directed that all these petitioners be committed to take their trial before the same Court of Session along with others. The chief ground on which the learned Additional District Magistrate set aside the orders of discharge is that as the case was solely triable by the Court of Session the Committing Court is not justified in taking upon itself the duty of appreciating evidence. A proposition of law stated in such wide terms is not justified by the decisions of this Court, and the learned Public Prosecutor does not support this extreme view. There are cases in which the Committing Court can appreciate evidence and discharge the accused. If the Committing Courts were merely to act as post offices the provisions of the Chapter relating to preliminary inquiry in which accused persons are allowed to examine defence witnesses would not have found a place there. Therefore, I am not prepared to agree with the Additional District Magistrate in those observations. The procedure to be followed in scrutinising and appreciating evidence in a preliminary register case is different from that to be adopted in an ordinary warrant case or a summons case. If there is some evidence which may appeal to any Court or a jury, the Committing Court where it does not agree with that evidence should not take upon itself the duty of rejecting the same.

3. Mr. Somasundaram, the learned advocate for the petitioners, invited my attention to the evidence against some of the petitioners. In certain instances their names are not mentioned in the first information report and in certain other instances only a single witness speaks about them. I do not intend to say anything more as regards these points than that there is some evidence justifying the case going to a Court of Session. That being so they were wrongly discharged by the trial Magistrate and the order of Additional District Magistrate is correct. The petitioners are on bail and will continue to be on bail until the Sessions trial is over. In these circumstances I do not wish to interfere with the orders of the learned Additional District Magistrate and therefore dismiss these petitions.

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