

Subba Naicker and ors. Vs. Emperor

Subba Naicker and ors. Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/800235

Court : Chennai

Decided On : Jul-30-1929

Reported in : AIR1930Mad103; 122Ind.Cas.788

Appellant : Subba Naicker and ors.

Respondent : Emperor

Judgement :

ORDER

Curgenven, J.

1. The petitioners in this case were discharged under Section 209, Criminal P.C., by the Sub-Magistrate of Koilpatti, the complaint against them being one of house breaking by night and theft in a building under Sections 457 and 380, I.P.C. The learned Sessions Judge of Tinnevely, taking the matter up suo motu, issued notice to the accused and passed an order on 14th January 1929, against which this petition is presented, directing that the order of discharge be set aside and, that the Sub-Magistrate do commit the accused to take their trial at the Sessions. No section of the Criminal Procedure Code is quoted as authority for this order but I must take it that it purported to be passed under Section 437, Criminal P.C., because that is the only section under which a revising Court has power to order commitment. If that be so, the learned Sessions Judge appears to have overlooked the circumstance that the section relates only to cases triable

exclusively by the Court of Sessions, and the offences of house breaking by night and theft in a building do not fall within that category. The same error was dealt with in a case *Thammanna v. Emperor* : (1905)15MLJ373 , referred for orders. The correct procedure was to order further inquiry under Section 436.

2. It has been pressed upon me that the Sub-Magistrate had valid grounds for his order of discharge, and that further proceedings should not be taken against the accused. After reading and considering the judgments, I think the best course is that I should make an order setting aside the order of the Sessions Judge directing commitment and restoring the case to his file for disposal according to law. Since there has been a change of officers, it will be open to the present Sessions Judge freshly to consider whether further enquiry into the complaint is justified. I order accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com