

In Re: Subbaraya Setty and ors.

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SooperKanoon Citation : sooperkanoon.com/802892

Court : Chennai

Decided On : Dec-11-1953

Reported in : 1954CriLJ1237

Judge : Somasundaram, J.

Appellant : In Re: Subbaraya Setty and ors.

Judgement :

ORDER

Somasundaram, J.

1.This Is a revision against an order passed by the Sub-Magistrate of Kadiri in C. C. No. 2044 of 1952 under the following circumstances. The prosecution witnesses were heard and a charge was framed against the accused. After the framing of the charge the magistrate who heard the witnesses went on leave for two months. Another Magistrate succeeded him and before him an application under Section 350, Criminal P.C. was filed for the resumption of the prosecution witnesses who had already been examined for the purpose of rehearing them. But before they could be heard the new Magistrate was transferred and he was succeeded by the original Magistrate who was reposted and as he had heard. the witnesses and had framed a charge against the accused he refused, to resumption the witnesses who had already been summoned by the interim Magistrate who was there for a short period. The question is whether his refusal to resumption the

witnesses and rehear them is proper and whether it in any way, offends the provisions of Section 350, Criminal P. C. or any other general principle governing the trial of cases under Criminal P.C.

2. That the present case cannot fall under the provisions of Section 350, Criminal P. C. is clear because only when a Magistrate who has heard and recorded the whole or any part of the evidence in a trial, ceases to exercise jurisdiction therein and is succeeded by another Magistrate, the provisions of Section 350, Criminal P. C. will apply. The Magistrate who was there during the absence on leave of the original Magistrate for a short period did not hear any of the witnesses in the case. He only directed issue of summons to the witnesses and before he could take up the trial of the case and could hear and record their evidence the first Magistrate who went on leave joined duty after the expiry of his leave and took charge of the case. Under these circumstances it seems to me that the provisions of Section 350, Criminal P. C. in terms will not apply to this case.

3. The only other question is whether the order of a Magistrate who had directed issue of summons to the witnesses for the purpose of rehearing them could be ignored by the succeeding Magistrate who has taken charge of the case and who has already heard the witnesses for the prosecution and had framed charge against the accused. There are three decisions of our High Court in - 'Sriranga Chettiar v. Subramania Asari' : AIR1927 Mad81 , another in - 'Govindan v. Krishnan' AIR 1924 Mad 227 (B) & the third to - 'Raraalingam Piliai v. Emperor AIR 1934 Mad 475 (C), which go to the extent of saying that where after a trial was nearly completed after the hearing of the witnesses and the charges had been framed against the accused, the Magistrate hearing the case was transferred and his successor ordered 'de novo' trial and directed summons to issue to the prosecution witnesses, whoever heard the case thereafter, even if it was the Magistrate who originally held the trial, must hear the case 'de novo' and that there had been no fresh examination of witnesses by the succeeding magistrate would not make any difference.

But in the case reported in - 'Aynan Muthlrian, to re', 1928 Mad Cr C 74 (D), Devaaoss J. has taken a different view and has held that the mere fact of transfer

of the case to a magistrate's file, his having that case for a short period and then adjourning it to a certain date after directing issue of summons at the request of the accused to some of the prosecution witnesses who had already been heard by a former magistrate would not entitle an accused to insist upon a 'de novo' trial so long as the Magistrate had not recorded any evidence and that it is only when the Magistrate has heard or recorded any part of the evidence that it could be said that the transfer of the case from his file would entitle the accused to ask for a 'de novo' trial.

4.-5. In my opinion, the view held by Devadoss J. seems to be the correct one. The case has to be decided on the principle which governs the provisions of Section 350, Criminal P. O. The object of introducing this provision is to enable the new Magistrate to hear the witnesses afresh so that he can watch their demeanour and when this has been done by the magistrate who went on leave in the present case, there seems to be no valid reason for his re-examining these witnesses again. The order passed by the Magistrate in the circumstances of the present case is a correct one.

6. As pointed out by Salmond on Jurisprudence (10th Edn. p. 499) a principle valid within certain limits' becomes false when applied beyond those limits. I think the maxim '*Cessante ratione legis cessat ipsa lex*' is applicable to the facts of this case. When the very basis of a rule does not exist the rule itself ceases to exist. As pointed out earlier the very basis for resummoning of the witnesses is for the purpose of enabling the Magistrate to watch their demeanour as he has not watched it before. But this purpose does not exist with the present Magistrate as he has already seen the witnesses and recorded their evidence & has even framed charge against the accused. There is, therefore, no need for the present Magistrate to resummon the witnesses and rehear them. In this view, I uphold the order of the lower court and find that he need not re-summon the witnesses for the prosecution and rehear them. This criminal revision case is, therefore, dismissed.