

In Re: Ambayara Goundan

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Court : Chennai

Decided On : Oct-25-1923

Reported in : 81Ind.Cas.218

Judge : Odgers and ;Wallace, JJ.

Appellant : In Re: Ambayara Goundan;In Re: Pachamuthu Goundan

Judgement :

1. The objection taken is that the whole procedure is illegal in toto. The prosecution was initiated by the Forest Range Officer, Atur, and the accused were charged with grazing 50 goats in the Godamalai Reserve on 7th July 1922. The Forest Range Officer was not examined on oath under Section 200, Criminal Procedure Code, and under the present amended Criminal Procedure Code there is no question that this is not required. It is said that this is an illegality and not an irregularity. It is also said that the Magistrate, had no cognisance of this case under Section 190 of the Code of Criminal Procedure. There is no doubt that this is wrong, the terms of the section show that a Magistrate has cognisance before he examines the complainant under Section 200. That the omission to examine complainant is a mere irregularity is borne out by the decision in Queen-Empress v. Monu 11 M. 443 : 2 Weir 238 : 4 Ind. Dec. 309, where it was held that the omission to examine the Thasildar under Section 200 was a mere irregularity. The point is also taken in In re Vein Nathan 12 Ind. Cas. 526 : 35 M. 608 : 10 M.L.T. 573 : 22 M.L.J. 155; (1911) 2 M.W.N. 356 : 12 Or. L.J. 550, but that is a question of dismissal under Section 203. As Ramesam, J., points out in In re Ramaswamy

Iyengar 69 Ind. Cas. 371 : 43 M.L.J. 710 : 16 L.W. 220; (1922) M.W.N. 681; A.I.R. (1922) (M.) 443 : 23 Cr. L.J. 691, the person prejudiced by such irregularity is the complainant and when the case ends in a conviction, he has no grievance and the accused cannot in general complain of the irregularity as the omission to take a sworn statement from complainant cannot prejudice the accused. The complainant is not examined and it must be a matter of evidence to be decided by the Court hearing the case, as to whether the evidence without that of the complainant is sufficient for a conviction. We think, this is a mere irregularity and that the accused has not been prejudiced by the omission under Section 537, Criminal Procedure Code, and that this point must fail. Two other points raised before us were not taken in the revision petitions and must, therefore, fail. These Criminal revision petitions must be dismissed.

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