

**In Re: Aligiriswami Naicken**

**In Re: Aligiriswami Naicken**

**SooperKanoon Citation :** [sooperkanoon.com/803928](http://sooperkanoon.com/803928)

**Court :** Chennai

**Decided On :** Jan-28-1910

**Reported in :** 5Ind.Cas.831

**Judge :** Ralph Benson and ;Sankaran Nair, JJ.

**Appellant :** In Re: Aligiriswami Naicken

**Judgement :**

1. During the preliminary-enquiry into a certain dacoity case R.C. No. 19 of 1908 on the file of the Periakulam Sub-Magistrate, the present accused was tendered a pardon by the District Magistrate under the provisions of Section 337, Criminal Procedure Code, and accepted the tender and was examined as a witness on the 4th and 5th December 1908 and then made what may be taken to be a full and true disclosure of what was known to him in connection with the dacoity as required by that section.

2. A few days afterwards the present accused was examined as a witness in the Dindigul Sub-Divisional Magistrate's Court in another case connected with the same transaction and made a statement which was totally contradictory of the evidence given by him in R. C. No. 19 of 1908. In consequence of this the Sub-Magistrate who was holding the enquiry in R.C. No. 19 of 1908 re-called the present accused and further examined him on the 4th January 1909 and the accused then adhered to the statement made by him before the Dindigul Sub-Divisional Magistrate and denied the truth of his previous statement in R.C. No. 19

of 1908. In consequence of this the District Magistrate on the 20th January 1909, revoked the pardon. The accused was then committed to the Sessions on a charge of having taken part in the dacoity and was convicted. He now appeals against the conviction on the ground that the condition on which the pardon was granted having been fulfilled by the statement made by him on the 4th and 5th December 1908, the Sub-Magistrate acted illegally in examining him again and that in any case his resiling from the first statement would not work a forfeiture of the pardon and further that had he been examined at the trial in the Sessions Court he was prepared to adhere to his first statement before the Sub-Magistrate, but that no opportunity was given him of doing so. As regards this plea we are unable to say that the Sub-Magistrate acted illegally or improperly in re-calling and re-examining the witness on the 4th January, nor do we think that the prosecution was bound to examine the accused as a witness in the Sessions Court after he had resiled from the original statement before the Magistrate and thereby shown that he was a witness on whose evidence no reliance could be placed. This was expressly ruled in *Queen-Empress v. Ramasami* 24 M. 321. It was there pointed out that the requirement of Clause 2 of Section 337 of the Criminal Procedure Code that a person accepting a tender of pardon under that section must be examined as a witness 'in the case' was satisfied by his examination in the preliminary enquiry and that the prosecution was not bound to put him forward as a witness in the Sessions Court if it was of opinion that his evidence would not be truthful. As regards the plea that the statement of the 4th and 5th December 1908 was a compliance with the condition on which the pardon was tendered and could not be affected by the witness subsequently resiling and contradicting that statement, the appellant's counsel relies on the observations of Aston, J, in the case of *Emperor v. Kothia Navalya Bhil* 30 B. 611 : 8 Bom. L.R. 740 : 4 CrL. L.J. 346. What was actually decided in that case was that when a person has been pardoned and has afterwards been placed on his trial for the offence, on an allegation that he has forfeited the pardon, it is open to him to plead the pardon in bar of the trial, and the Court (i.e., the Jury in a Jury case and the Judge in other cases) must first try the issue as to whether the accused has, in fact, forfeited the pardon. In deciding the question the Court would in the words of Beaman, J., 'have to raise the issue whether he had or had not complied with the conditions of the

pardon; whether he had or had not made a full and true disclosure of the whole facts. And where, as in the present case, after having admittedly done that, he had at a later stage recanted, whether that recantation amounted to giving false evidence within the meaning of Section 339 and worked a forfeiture of the pardon.' This view of the law was accepted by this Court in the case of *Kalian v. Emperor* 32 M. 173 : 2 Ind. Cas. 343 : 9 Cri.L.J. 571 and is, no doubt, correct. It has nowhere been laid down that if a witness first makes a full and true disclosure, he is then at liberty to contradict his statement or deny its truth without any fear of forfeiting his pardon. Such an interpretation of Section 339 would, we think, be unreasonable, and would render nugatory the provisions of the law which aim at obtaining true evidence of offences by the grant of pardon to accomplices. The contrary has, in fact, been clearly laid down by this Court in *Queen-Empress v. Ramasami* 24 M. 321 and in *Kalian v. Emperor* 32 M 173 : 2 Ind. Cas. 343 : 9 Cri.L.J. 571 already cited where it was said that the transaction is one of the utmost good faith on both sides and that 'the approver commits a breach of the conditions if he fails to make a full and true disclosure throughout. It is not enough for him to make such disclosure before the committing Magistrate if he withdraws it in the Sessions Court or to make it when examined-in-chief if he withdraws it in cross-examination.' In the present case, however, the Sessions Judge has not followed the procedure above prescribed. He has not left it to the Jury to say whether the accused has given false evidence and has thereby forfeited his pardon. He has himself decided that the withdrawal of the pardon by the Magistrate is conclusive that it has been forfeited. This is not the law under the present Code as pointed out in the two cases cited above.

3. We must, therefore, set aside the conviction of the accused and direct the Sessions Judge to re-try the case in accordance with law.