

**In Re: Sevugaperumal and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/804134](http://sooperkanoon.com/804134)

**Court :** Chennai

**Decided On :** Nov-05-1942

**Reported in :** AIR1943Mad391(2); (1943)1MLJ129

**Appellant :** In Re: Sevugaperumal and ors.

**Judgement :**

**Byers, J.**

1. The six appellants have been convicted of house-breaking by night and dacoity, punishable under Sections 457, 395 and 397 of the Indian Penal Code, and sentenced to various terms of imprisonment by the Assistant Sessions Judge of Ramnad at Devakottai. They filed a regular appeal on the 6th August, 1942, through their learned Counsel and in due course the records were called for from the lower Court. On the 17th August, the Court of the Assistant Sessions Judge at Devakottai was destroyed by fire and it has been reported that the records of this case were destroyed in that fire. No copies of the records are available and since the provisions of Section 423 (1) of the Criminal Procedure Code are mandatory, Mr. Somasundaram suggests that the only course possible is to order a re-trial.. His contention is that it is obligatory for the Court to obtain and examine the record at the time of hearing and in support of his suggestion he relies on the decision in Queen-Empress v. Khimat Singh (1889) A.W.N. 54. The learned Public Prosecutor concedes that no other course is possible under the circumstances and in the result the convictions are set aside and the case is ordered to be re-tried by the

Sessions Judge of Ramnad. Mr. Somasundaram has informed the Court that he has copies of the committal proceedings and these may prove to be of great help if these records also have perished.

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