In Re: Maromma and ors.

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SooperKanoon Citation : sooperkanoon.com/804476

Court : Chennai

Decided On : Aug-08-1932

Reported in : 140Ind.Cas.756

Judge : Burn, J.

Appellant : In Re: Maromma and ors.

Judgement :

Burn, J.

1. It is contended by Mr. T.M. Venugopal Mudaliar, for the appellants that the statement made on oath by the appellants under Section 164, Criminal Procedure Code, were not 'in relation to a proceeding' in the Court of Session and that therefore the learned Sessions Judge had no jurisdiction to prefer complaints against the appellants. It is also contended that statements recorded by a Magistrate in the course of a Police investigation under Section 164, Criminal Procedure Code are not evidence in a stage of a judicial proceeding within the meaning of Expl. (2) to Section 193, Indian Penal Code In support of the latter contention Mr. T.M. Venugopal Mudaliar quotes the case of Emperor v. Purushottam Ishwar Amin 60 Ind. Cas. 593 : 45 B. 834 : 23 Bom. L.R. 1 : 22 Cri.L.J. 241. In citing this case I think Mr. T.M Venugopal Mudaliar has either not perused the report of it himself, or else he has hoped that I should be satisfied with a perusal of the headnote. For I find that Pratt, J., (vide pages 858-859 Page of 45

B--[Ed.]; has expressly stated that, in taking the view he did, he was differing from the view taken in two cases in this court, Queen Empress v. Alagu Kone 16 M. 421 and Suppa Tevan v. Emperor 29 B. 89. Such citations as this are, at best, a shear waste of the time of this court.

2. On the other point no authorities are cited and I need not say more than that I agree with the learned Sessions Judge. Statements made during the course of an investigation under P. 164, Criminal Procedure Code, into an offence of murder, which is triable only by a Sessions Court, must be hell to be 'in relation to' the trial in that court

3. It is also contended that the learned Sessions Judge had no jurisdiction to order the prosecution of the appellants because his order was passed nearly six months after the conclusion of the Sessions Trial. The authorities cited for this proposition are all cases which were decided prior to the amendment of the Criminal Procedure Code in 1923, and have no application to the present provisions of Section 176. This is not a case of private person applying for sanction; it is a case of the Public Prosecutor of Bellary moving the Sessions Court to prosecute.

4. Mr T.M. Venugopal Mudaliar for the appellants finally contends that the learned Sessions Judge ought not to have held it expedient in the interests of justice to prosecute the appellants because of their personal relationship to the accused in the Sessions case. This contention is unacceptable to me. Prima facie persons who give false evidence which may result in the conviction of an innocent person for murder ought to be tried for the offence they have committed. Their relationship to the accused, their age, the circumstances under which they came to give false evidence, are, as the learned Sessions Judge says, matters to be considered by the Magistrate before whom they will appear.

5. This appeal is accordingly dismissed.

6. The learned Public Prosecutor has raised a question, whether each of these appellants ought not to have preferred a separate appeal. He points out that under Section 476B an appeal may be preferred by 'any person against whom a complaint has been made'. It is not stated that an appeal lies from an order

directing a complaint to be made. It seems to me that the learned Public Prosecutor's contention is correct. In these particular cases, four separate Criminal Miscellaneous Petitions were filed by the Public Prosecutor of Bellary against the four appellants; the learned Sessions Judge's order is one order disposing of the four petitions. None of the appellants had any right of appeal under Section 476-B until a complaint was actually preferred. The complaints against the four appellants are quite separate and distinct; the appellants will have to be tried separately and they may have each his or her separate defence to raise. Therefore it appears to me they ought each to have preferred a separate appeal. Mr. T.M. Venugopal Mudaliar relies on the case of Emperor v. Daga Devji Patel 108 Ind. Cas 26 : 52 B. 164 : 30 Bom. L.R. 76 : I.L.T. 40 B. 4 : A.I.R. 1928 Bom. 64 : 29 Cri.L.J. 315 : 9 A.I. Cri. R. 435 for the proposition that the appeal is really against the order and not against the complaint. That case does not, however, touch the point raised by the learned Public Prosecutor because there was only ore person concerned and not several. I need not discuss this question further since the appeal has been admitted and has been dealt with as one appeal, and virtually it has been argued as if it was one appeal.