

In Re: Wahid

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SooperKanoon Citation : sooperkanoon.com/804752

Court : Chennai

Decided On : Oct-07-1948

Reported in : 1949CriLJ729; (1948)2MLJ625

Appellant : In Re: Wahid

Judgement :

ORDER

Subba Rao, J.

1. The Honorary Presidency Magistrates, convicted the first accused under Section 75 of the City Police Act and sentenced him to. pay a fine of Rs. 25 or in default to one week's rigorous imprisonment. In addition, the Court directed him to be bound over under Section 106 of the Criminal Procedure Code.

2. The learned Counsel for the accused argued that the order under Section 106 of the Criminal Procedure Code was bad inasmuch as the provisions of Section 511 Criminal Procedure Code, had not been complied with. Under Section 511, Criminal Procedure Code, particular procedure has been prescribed for proving the previous convictions, and that procedure admittedly has not been followed in this case. Dealing with Section 511, Criminal Procedure Code, the learned Judges of the Calcutta High Court in Emperor v. Sheikh Abdul I.L.R. (1916) Cal. 1128 observed as follows:

With regard to the statement of the learned Magistrate as to the procedure adopted in the Police Court for the proof of previous convictions, we may say at once that we cannot accept the learned Magistrate's suggestion that Presidency Magistrates are absolved from the ordinary rules of evidence in taking proof of such previous convictions. Whenever it is required to prove a previous, conviction against a man, whether it be for the purpose of enhancement of punishment under Section 75, Indian Penal Code or in proceedings under Chapter VIII, Criminal Procedure Code, such previous convictions must be proved strictly and in accordance with law. Unless they are so proved, no Court--whether it be that of a Presidency Magistrate or not--can properly take such previous convictions into consideration against an accused person.

These are weighty observations and must be followed strictly whenever the question arose in regard to the proof of previous convictions. But in this case a perusal of the judgment shows that the accused admitted that they had previous convictions. It is very likely that the accused did not think of denying such convictions, as, if denied, they could have been easily proved.

3. The learned Counsel also relied upon a judgment of Horwill, J., in *Arumugha Thevar v. Emperor* : (1942)2MLJ613 in support of his argument that in a case where the accused is sentenced under Section 75 of the City Police Act he should not be also bound over under Section 106, Criminal Procedure Code. That judgment does not support this argument. In that case except the solitary instance of disorderliness of which he was convicted there was no other material before the Magistrate for binding over the accused under Section 106, Criminal Procedure Code. Further the order in this case was passed on 10th February, 1948, and practically the period of one year is running out. In the circumstances, I think it is not a fit case for interference.

4. The revision is dismissed.