

In Re: Venkatakrishnayya and anr.

In Re: Venkatakrishnayya and anr.

SooperKanoon Citation : sooperkanoon.com/804990

Court : Chennai

Decided On : Oct-24-1916

Reported in : 39Ind.Cas.294; (1916)31MLJ837

Judge : Oldfield and ;Seshagiri Aiyar, JJ.

Appellant : In Re: Venkatakrishnayya and anr.

Judgement :

ORDER

1. The point for decision is whether an appeal lies to the Sessions Judge Or the District Magistrate at the instance of a person against whom a non-appealable sentence has been passed, on the ground that appealable sentences have been passed against, others jointly tried with him. Section 413 of the Code of Criminal Procedure speaks of an 'appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding Rs. 50 only, or of whipping only. ' The argument is that, if in the case there is an appealable sentence against any one, the whole case is appealable. In our opinion, although for the sake of convenience, the Code, under certain restrictions, provides that there can be a joint trial, it must be taken that there is a separate case as against each of the accused dealt with in the joint trial. Therefore the reference in Section 413 to a case is, not to what, in ordinary language, is regarded for statistical and other purposes as one case, but to the adjudication as against each of the accused. There can be no question that each of the convicted

accused is entitled to prefer a separate appeal. There can be a number of appeals in that way. The moment that sentences are passed against each of the accused, the one case is split up into a number of cases within the meaning of Section 413 of the Code.

2. Mr. Justice Piggott has taken the view in *Lal Singh v. Emperor* 38 A.J 395 ; 17 CrL. L.J. 513 that if there is a single appealable sentence in the case, the whole case is appealable. The learned Judge refers to Section 408 of the Code. The operative portion of that section provides that each of the persons convicted by an Assistant Sessions Judge shall have a right of appeal to the Court of Session. Proviso (b) says that if a sentence of, or more than, four years is passed in the case, the appeal shall lie to the High Court. It is noteworthy that whereas the operative portion speaks of persons, the proviso speaks of cases. It was held in *Palani Koravan v. Emperor* 17 M.L.J. 248 that if any one of the accused jointly tried with others is sentenced to imprisonment for four years, the appeal in the case of all the accused would lie to the High Court. The case, although decided long ago, has not been ordered to be reported in the authorised reports. However that may be, we do not think the same considerations apply to Section 413. We are not prepared to extend the analogy of Section 408 to Section 403, as Mr. Justice Piggott has done.

3. Some rulings of the Chief Court of Burma were sought to be quoted before us. This Court has consistently refused to have such cases quoted; and we think it is a wholesome rule.

4. In Bombay, it has always been held that only persons on whom appealable sentences were passed had the right of appeal. See *Reg. v. Mnliya Nana* 5 B.H.C.R. 24 Cr. and *Reg. v. Kalubhai Meghabhai* 7 B.H.C.R. 35.

5. In this Presidency also, the practice has been the same. We see no reason to depart from it now. The matter should be dealt with by the Legislature, if so advised.

6. We are, therefore, of opinion that the procedure of the Sessions Judge is wrong. On looking into the record, we think that the accused should be discharged. At the

same time, we must point out that it does not follow, as a matter of course, that because some of the accused tried along with others are acquitted on the merits, others should necessarily have the benefit of the finding of the Appellate Court.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com