

In Re: Makky Moithu and ors.

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SooperKanoon Citation : sooperkanoon.com/805193

Court : Chennai

Decided On : Aug-06-1942

Reported in : AIR1943Mad278; (1943)1MLJ154

Appellant : In Re: Makky Moithu and ors.

Judgement :

ORDER

Horwill, J.

1. The petitioners were convicted by the Sub-Magistrate, Quilandy, under Sections 109 and 379, Indian Penal Code, for cutting trees and taking them away from the Government forest and their convictions were confirmed in appeal by the Sub-Divisional Magistrate of Calicut.

2. This petition was admitted on two points : firstly, whether there was any evidence on which the conviction of the first accused could be based and, secondly, on the question whether a certain report made by the Deputy Tahsildar in charge of the forest in question to the Collector is privileged. On the first point, the only evidence against the first accused is the admission of the second accused that he had committed the offence at the instigation of the first accused and the presence of the marks of the first accused on the trees. The admission of the second accused is an exculpatory statement in so far as the first accused is concerned; for he merely transfers the blame from his own shoulders to those of

the first accused. Moreover, his confession can only be taken into account against the first accused when there is other positive evidence. The presence of the first accused's marks on the trees shows little more than that the second accused was the first accused's agent or servant. The first accused's defence was that he had asked his servants to cut trees in some other place. This explanation, is not inconsistent with the evidence. There was therefore no legal evidence against the first accused on which a conviction could be based. The conviction and sentence of the first accused are therefore set aside and that accused acquitted.

3. Section 124 of the Indian Evidence Act says:

No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

This section leaves it to the Court to consider whether the communication was of the nature covered by the section, i.e., the Court has to decide whether the section can be applied. If it does, the Court has to exclude the document if the public officer concerned considers that the public interests will suffer by disclosure. The Court cannot question his decision on that point. This report from the Deputy Tahsildar to the Collector was undoubtedly a confidential document. It was not intended to be revealed to the public but only to the person to whom it was addressed and to such persons to whom the Collector thought fit to send it. The Collector has sent the document to the Public Prosecutor and I have perused it. There is nothing in the document which would help the accused. On the contrary, it seems to have been in the accused's best interests that this document was not shown to the Court.

4. There is no reason why I should interfere with the conviction and sentence passed on the second and fourth accused.