

In Re: Velayudha Mudali and ors.

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Court : Chennai

Decided On : Nov-03-1948

Reported in : 1949CriLJ698; (1948)2MLJ653

Appellant : In Re: Velayudha Mudali and ors.

Judgement :

ORDER

Govinda Menon, J.

1. The circumstances arising in these four revisions have to be set out briefly in order to understand the point of law raised by Mr. P.C. Parthasarathy Ayyangar, the learned Counsel for the petitioners.

2. C.C. No. 138 of 1946 on the file of the Sub-Divisional Magistrate, Vellore, was the result of a charge against forty accused for various offences under the Indian Penal Code. When that was taken up for hearing six of the accused were absconding and so the case was split up against the absconders and numbered as C.C. No. 207 of 1946. Subsequently C.C. No. 207 of 1946 was transferred to the Additional First Class Magistrate of Cheyyar at Ranipet and numbered as C.C. No. 74 of 1946. In the meanwhile, the Sub Divisional Magistrate, Vellore, proceeded with the enquiry against the 34 accused before him in C.C. No. 138 of 1946 and framed charges against them for offences under Sections 147, 448, 427, 435, 325 and 332 Indian Penal Code. Afterwards this case was also transferred to

the Additional First Class Magistrate of Cheyyar at Ranipet and numbered as C.C. No. 73 of 1946. Subsequently on an application made by the accused in C.C. Nos. 73 and 74 of 1946, they were clubbed together as one case and intended to be tried as such. The accused again filed an application praying that as a combination of the fifth and sixth charges, viz. those under Sections 325 and 332, Indian Penal Code, would constitute the more serious offence under Section 333, Indian Penal Code, exclusively triable by a Court of Session, the calendar cases should be converted into a preliminary register case and proceeded with on that basis. On this petition arguments were heard and an order passed by which C.C. Nos. 73 and 74 of 1946 were converted into P.R.C. No. 1 of 1946. During the progress of the enquiry in P.R.C. No. 1 of 1946, the Public Prosecutor applied under Section 494, Criminal Procedure Code for permission to withdraw the case stating also that the intention was to file separate prosecutions against the accused differently for various offences. The Court granted the permission for the withdrawal and discharged the accused under Section 494(a), Criminal Procedure Code.

3. The four cases out of which the above criminal revision cases arise were subsequently filed, in each of which some of the accused in P. R. C. No. 1 of 1946 have been arraigned again for offences under various provisions of the Indian Penal Code. Thereupon counsel for the accused took the objection that the result of withdrawal of P.R.C. No. 1 of 1946 amounted to an acquittal of the accused for such of the offences as were triable by the Additional First Class Magistrate, such as offences under Sections 147, 448, Indian Penal Code, etc. The lower Court has overruled these objections and the petitioners have sought to revise these orders.

4. The question for consideration is what in substance is the effect of the withdrawal of P. R. C. No. 1 of 1946. The ruling in *Sriramulu v. Veerasalingam* : (1914)27MLJ589 is authority for the position that when once a charge is framed, it cannot be wiped off by either discharging the accused or withdrawing the case. It is clear that proceedings before a Magistrate in a warrant case are only enquiries until the charge is framed and as soon as the charge is framed, the enquiry is transformed into a trial. Where the case has developed into a trial stage, its dismissal or withdrawal will result only in an acquittal of the accused. The original charge framed cannot be ignored or cancelled without either a conviction or an

acquittal. Even if after the framing of a charge, a succeeding Magistrate examines the witnesses afresh and passes an order of discharge, still such an order would amount to an acquittal. The decision in *Sriramulu v. Veerasalingam* : (1914)27MLJ589 has been consistently followed in this Court: See *Abdul Hameed v. Muhammad Salt* (1939) 52 L.W. 348. As early as 1888, a Bench of this Court in *Queen Empress v. Sivarama* I.L.R. (1888) Mad. 35 has held that an accused committed to sessions on a charge cannot be discharged by the Sessions Court under Section 494, Criminal Procedure Code but must either be convicted or acquitted. The withdrawal of a charge by the Public Prosecutor with the permission of the Sessions Judge amounts to an acquittal of the accused. Bearing the principles underlying the above decisions, let us see what is, in effect, the result of the withdrawal. The learned Public Prosecutor urges that the request for withdrawal was combined with the statement that the intention of the prosecution was to file separate cases against individuals or groups of accused separately and according to him, in pith and substance, the order giving permission to withdraw the case amounts also to an order empowering the institution of the present cases. If the Code of Criminal Procedure contained a provision similar to Order XXIII, Rule 1, Civil Procedure Code, allowing the withdrawal of a case with permission to file, on the same facts, a fresh complaint, this argument is entitled to weight. But in the absence of any such rule of law, one has to envisage the result of a withdrawal in accordance with the ideas underlying the sections of the Criminal Procedure Code. If it is impossible to wipe off or obliterate a charge already framed without an acquittal or with the culmination of the charge in a conviction, any withdrawal with permission to file a fresh complaint cannot be understood as the keeping alive of a charge. Moreover, the Criminal Procedure Code does not, in specific terms, provide for the conversion of the category of calendar cases into the category of preliminary register cases. By Section 347, the Code enacts that if, after the commencement of an enquiry or trial, it appears to the Magistrate at any stage of the proceedings before signing the judgment that the case ought to be tried by a Court of Session or the High Court, and if he is empowered to commit for trial, he shall commit the accused under the provisions of the Code. In this case the First Class Magistrate converted the calendar case into a preliminary register case under the powers conferred by

this section. Without altering the nomenclature of the cases, if he had committed the case, the section would have been satisfied. The alteration of the nomenclature into a preliminary register case does not legally affect the nature of the proceedings and if the nature of proceedings is not affected, the withdrawal of a case after the framing of a charge, can amount to an acquittal of the accused and nothing else.

5. I would therefore hold that the prosecution is not entitled to file fresh charge-sheets against the accused for such of the offences for which charges had already been framed. But it is open to the prosecution to show, on the facts proved and on the facts elicited, an offence exclusively triable by a Court of Session for which no charge had been framed before the withdrawal has been committed. These revision petitions are therefore allowed only to the extent that the enquiry in the various calendar cases before the lower Court cannot proceed for any offences for which charges had already been framed. The Courts are at liberty to proceed with the enquiry in relation to an offence triable exclusively by a Court of Session which might emerge from the evidence adduced.