

In Re: Ramaswami Gounder

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Court : Chennai

Decided On : Jun-26-1968

Reported in : (1968)2MLJ534

Appellant : In Re: Ramaswami Gounder

Judgement :

ORDER

N. Krishnaswamy Reddy, J.

1. This reference is submitted by the District Magistrate (J.), Tiruchirapalli, under Section 439 of the Code of Criminal Procedure. One Ramaswami Gounder was arrested by Velayudhampalayam Police under Section 4-A of the Madras Prohibition Act on 22nd July, 1965. The charge-sheet against the said Ramaswami Gounder was filed on 23rd July, 1965, before the Sub-Magistrate, Karur. The Sub-Magistrate remanded the accused and on the adjourned date, the accused admitted the offence. The Sub-Magistrate therefore convicted and sentenced him to suffer rigorous imprisonment for six weeks. It is stated that the accused has undergone the full term of imprisonment. It appears that after he was convicted, the said Ramaswami Gounder sent a telegram to the Military-Authorities on 25th July, 1965, as he was a soldier during the relevant period. The Military authorities addressed the Sub-Magistrate, Karur, on 17th December, 1965, about the irregularity in the procedure followed by him in trying the accused who was subject to the provisions of the Indian Army Act. The Sub-Magistrate sent a

report to the District Magistrate (J.), Tiruchirapalli, stating that neither, the accused nor the police brought to his notice that the accused was a serving sepoy and therefore it was not possible for him to follow the procedure laid down in rule IV of the Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1952. The learned District Magistrate referred this matter to this Court as he felt that the procedure followed by the Sub-Magistrate was not according to law.

2. It now transpires from the letter addressed by the Military Authorities that the accused was a serving sepoy during the time of his arrest and conviction, and he would be subject to the provisions of the Indian Army Act. An offence similar to that of Section 4-A of the Prohibition Act by a sepoy can be tried and punished by a Court-Martial and under Section 549 of the Code of Criminal Procedure, it is obligatory on the part of the Magistrate, when a person subject to Military, Naval or Air Force law, is brought before him, charged with an offence for which he is liable to be tried either by a Court to which the Code of Criminal Procedure applies or by a Court-Martial, to have regard to the rules framed under Section 549 (1) and deliver such person to the Commanding Officer of the regiment, corps or detachment to which he belongs for the purpose of being tried by the Court-Martial. It is true that the accused is a serving sepoy and should have been delivered by the Magistrate to the Court-Martial according to the provisions and the rules framed thereunder. But, in this case, as stated by the learned Sub-Magistrate, none brought to his notice that the accused was a sepoy at the time of the trial or conviction. Section 549 (1) has to be understood that when a person is brought before the Court, the Magistrate should have known that he is brought as a person subject to the provisions of the Army Act. Without the information of that nature, it would be impossible for the Magistrate to follow the procedure under Section 549. Then the whole question turns on the point whether the person brought before the Magistrate is a person subject to the provisions of the Indian Army Act. If there is no material for the Magistrate to know that he was a serving sepoy subject to the provisions of the Army Act, it cannot be said that the procedure followed by him is wrong. Whatever the position may be, taking the facts of the present case, it would be unfair to quash the proceedings and allow the accused to be tried by the Court-Martial, in view of the fact that he had served the full term of imprisonment.

3. The reference is ordered accordingly.

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