In Re: Nalluri Chenchiah and ors.

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SooperKanoon Citation : sooperkanoon.com/808129

Court : Chennai

Decided On : Jan-16-1919

Reported in : 50Ind.Cas.987; (1919)36MLJ296a

Judge : Sadasiva Aiyar and ;Napier, JJ.

Appellant : In Re: Nalluri Chenchiah and ors.

Judgement :
ORDER

Sadasiva Aiyar, J.

1. The petitioners in revision are the four accused in P.R.C. No. 4 of 1918 on the file of the Stationary 2nd Class Magistrate, Ongole. An enquiry for the purpose of commitment or discharge, as the case may be, was made in this case by the said Stationary 2nd Class Magistrate, the complaint against the 1st accused being under two sections 471 and 193, Indian Penal Code, and against the other accused under Section 193, Indian Penal Code, alone. The charge under Section 193 relates to the depositions Exhibits K, L, M and N given by the four accused before the District Munsif of Ongole, in Original Suit No. 47 of 1913, to the effect that the complainant executed a promissory note, for Rs. 500 in favour of the 1st accused's father. The Stationary Sub-Magistrate discharged all the accused under Section 209, Criminal Procedure Code. He consider ed that Exhibits K, L, M and N were not admissible in evidence as the legally correct record of the statements

given by the accused in the Ongole District Munsif's Court's suit, because it appeared from the evidence of the Trial Clerk (P.W. No. 3) of the District Munsif's Court that the depositions, after they were completed, were not interpreted and read over to the witnesses as required by Order XVIII, rules 5 and 6 of the Civil Procedure Code. He also held that the statements could not be proved by the other evidence except these records (Exhibits K, L, M and N) under Section 91 of the Indian Evidence Act. This is the ground oh which the Stationary Sub-Magistrate based the discharge of the accused so far as the offence under Section 193, Indian Penal Code, was concerned. As regards the offence under Section 471, Indian Penal Code, against the 1st accused alone, the Magistrate's reasons are not quite clear except that the depositions (Exhibits K, L, M and N) cannot be used to connect the 1st accused with the forged document Exhibit A.

2. Against the order of discharge a petition under sections 435 and 437 of the Cede of Criminal Procedure seems to have been presented to the Sessions Judge and the learned Judge set aside the order of discharge and passed an order containing two directions, the first being that the case against the 1st accused should be committed to the Sessions Court by the Sub-Magistrate in order that the 1st accused may be tried for the offence under sections 471 and 193, Indian Penal Code, and the second direction being that, as regards the accused Nos. 2, 3 and 4, the District Magistrate of Guntur should direct either the Joint Magistrate of Ongole or any other Magistrate he thinks fit to make a further enquiry into the complaints against these persons and try them as s separate cases and dispose of them according to law. I must say that the learned Sessions Judge's first direction out of the two directions found in his order is not warranted by the powers exercisable by him under the provisions of Section 435 or Section 436 of the Criminal Procedure Code. The offence under Section 193, Indian Penal Code, is not exclusively triable by the Court of Session. The offence under Section 471, Indian Penal Code, is 1 also not exclusively triable by the Court; of Session, unless the forged document is a promissory note of the Government of India. The Criminal Procedure Code; (section 435) gives the Sessions Judge power only to call for and examine records. Section 433 gives him power to order commitment only when the offence is exclusively triable by the Sessions Court. The Sessions Judge's order, therefore, directing the 1st accused to be committed to his Court is

illegal and must be set aside. As regards the charge under Section 193, Indian Penal Code, against all the accused, there is a case not officially reported but mentioned in Meango v. (sic) 45 Ind. Cas 507 : (1918) M.W.N. 239 : 7 L.W. 435 : 19 Cri .L.J. 603 : 24 M.L.T. 242 which goes to the length of holding that even serious irregularities in making the record of the depositions of witnesses do not render that record inadmissible in evidence to prove the statement so recorded and only go in mitigation of the weight to be attached to that record as accurate. I am not prepared to agree to that extent. Where a deposition, after it has been, completed, has been interpreted and read over to the witness and acknowledged by him to be correct, any irregularity due to the omission of the observances of further formalities such as the presence of the Judge and his listening to the reading during the time when the deposition is interpreted and read over, to the witness, may not affect the admissibility of the record as evidence of the witness's statement: see Bogra In re 7 Ind. Cas. 414 : 34 M.P 141 : 20 M.L.J. 943 : 8 M.L.T. 117 : (1910) M.W.N. 435 : 11 Cri. L.J. 482. But the omission to interpret and read over the deposition to the witness after the deposition is completed cannot, in my opinion, be put on the same footing, because the guarantee provided by the law for the accuracy of the deposition has been substantially ignored, and it is dangerous and against public policy to make awitness liable on such a wholly unsafe record. I would, therefore, set aside the re Sessions Judge's order so far as if directs A the District Magistrate to make further enquiry in respect of the charge under Section 193, Indian Penal Code.

3. I may add that the Sessions Judge tell into another error in holding that the Sub-Magistrate contravened the provisions of Section 239 of the Criminal Procedure Code in enquiring into the cases of these four accused jointly--section 239 prohibiting only a joint trial and not a joint preliminary enquiry into a case for the purpose of commitment to the Session. Though the Sessions Judge's order as against the 1st accused must be set aside as illegal, I think that this is a case in which the powers of this Court under Section 439, Criminal Procedure Code, might properly be utilised for passing the necessary order in connection with the alleged forging of the promissory note for Rs. 500 in the interests of justice. There was some evidence before the Sub-Magistrate that the 1st accused did use the document as genuine in a Court of Justice and that the document is a forgery. The

proper course for the Sub-Magistrate under those circumstances was to have committed the 1st accused to the Sessions Court as regards the offence under Section 471, Indian Penal Code. I would, therefore, direct him to do so.

Napier, J.

4. I agree. I would add that 1 am strongly influenced in the view I take as to the admissibility of the Exhibits K, L, M and N, which have clearly been record ed in an irregular manner, by the provisions of Section 91 of the Evidence Act, which seem to lay down that the deposition is the only evidence admissible of the statements alleged to have been made by the witness. The words are: 'In all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of such matter except the document itself or secondary evidence of it. It seems to me that where the Legislature has imposed so narrow limits on methods of proof, we should be careful to see that this sole proof is forthcoming in a form which is free from suspicion and I entirely agree with my learned brother that where the ground of the attack goes to the knowledge of the witness as to what has been recorded as his statement, we have not got that certainty of accuracy which the law must require under Section 91 of the Evidence Act. I agree with the order proposed by my learned brother.