Mudda Verrappa Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/808864

Court : Chennai

Decided On : Jan-24-1935

Reported in : AIR1935Mad318; 157Ind.Cas.1020

Appellant : Mudda Verrappa

Respondent : Emperor

Judgement :
ORDER

Burn, J.

1. The learned Sub Magistrate has not apparently understood Section 350. Criminal P.C. He may have been misled by the use in the accused's petition of the phrase 'de novo trial.' This Js common, but inaccurate. The accused cannot demand a de novo trial. All that he can demand is that the witnesses whose evidence has already been recorded or any of them be summoned and re-heard. This is apparently to to ensure that the accused, if he wants it, may have the satisfaction of knowing that the Magistrate's decision will be based on the evidence of witnesses whom the Magistrate has himself seen. It follows that if the accused after putting forward his demand for the rehearing of the witnesses says he does not want any particular witness to be heard, the Magistrate has no power to order that the evidence of that witness shall be taken afresh. This however as the learned Public Prosecutor, points out, is subject to a limitation. The Magistrate,

as well as the accused, has a privilege under Section 350, Criminal P.C. If he does not like the idea of giving judgment on evidence partly or wholly recorded by his predecessor, he may decide to re-summon the witnesses recommence the inquiry or trial. If he exercises that option, it is clear that the accused cannot object to the examination afresh of any witness. In the present case it is not known whether the Magistrate was exercising his own option to re-commence the trial (at the suggestion of the accused) or whether he thought he was granting the accused's request for the re-summoning and re-hearing of the witnesses. It is not therefore certain that the learned Sub Magistrate committed any error when he re-heard two prosecution witnesses whom the accused did not want him to re-hear.

2. The accused did not apparently protest against the action of the prosecution in dispensing with one prosecution witnesse and therefore that action though irregular cannot be a ground for: interference, with the conviction unless? there is prejudice (Section 537, Criminal P.C.) In the face of the evidence of the police Inspector, I cannot see anything to be gained by sending this case: back for re-trial. There is no reason to disbelieve the police Inspector; the accused himself admitted that he had produced the notes and the sarige,; though he said they were his own. The conviction under Section 411, I.P.C. is correct and the sentence not excessive. This petition is dismissed.