

In Re: Kota Appadu and ors.

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SooperKanoon Citation : sooperkanoon.com/809551

Court : Chennai

Decided On : Nov-23-1915

Reported in : 32Ind.Cas.673

Judge : Abdur Rahim and ;William Ayling, JJ.

Appellant : In Re: Kota Appadu and ors.

Judgement :

ORDER

Abdur Rahim, J.

1. In this case the accused persons have been convicted under Sections 143 and 379 and 149, Indian Penal Code, and sentenced to six months' rigorous imprisonment each. Both the Joint Magistrate, who originally tried the case, and the Sessions Judge, who heard the appeal, have not considered the evidence as regards actual possession of the land and the crops with respect to which the offences are alleged to have been committed. They have apparently proceeded on the effect of the order made in a previous case between the parties. In that case, the present accused or some of them were charged by the complainant's party with offences committed in respect of the land and the Sub-Magistrate who heard that case ordered in his judgment that 'the land' in dispute 'shall be put in possession of prosecution witness No. 1.' The Sub-Magistrate was examined in this case and he says in his evidence that he did not take steps to execute the

order because there was no written application. The Sessions Judge who heard the appeal seems to be of opinion that because there was that order in the previous case, it must be presumed as a matter of law that the complainant's party continued to be in possession and sowed the crops with respect to which the offence is alleged to have been committed. He is entirely wrong. There is evidence both on the side of the prosecution and the defence as to the actual possession of the land. The complainant's party allege they are in actual possession. On the other hand so does the defence and that was the real point to be considered in the case. Even if the Sub-Magistrate intended to actually put the complainant's party in possession at the time he passed the judgment it might be that in spite of that order the defence was in possession. Or it might be that the prosecution was actually in possession throughout. The previous order, as suggested by the Public Prosecutor, might merely have meant to be a formal one. I do not express any opinion on the point. There is actual evidence. There is the fact of the order being made and this evidence has to be considered in order to arrive at the finding as to who was actually in possession and who sowed the crops. I should; therefore, set aside the order of the Sessions Judge and ask him to restore the appeal to his file and re-hear it in the light of the observations which I have made.

Ayling, J.

11. I agree.