

Subramanian Vs. Emperor

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Court : Chennai

Decided On : Mar-10-1916

Reported in : 34Ind.Cas.1008

Judge : Coutts Trotter, J.

Appellant : Subramanian

Respondent : Emperor

Judgement :

Coutts Trotter, J.

1. In this case the prisoner was committed to the Court of Session of North Arcot on a charge of house-breaking by night and he was further committed, on a charge framed against him by the Magistrate, of previous convictions under Section 75 of the Penal Code. When the matter, came before the Assistant Sessions Judge, for some reason best known to himself, he chose to omit the charge under Section 75, altogether. The prisoner was tried and convicted of an attempted house-breaking. Why he was not convicted on the evidence of house-breaking is not clear to me; but let that pass. After conviction the learned Assistant Sessions Judge proceeded to put to the prisoner in the dock the previous convictions which he might have, but had not, inserted in the charge under Section 75, and the prisoner admitted them. Thereupon he passed on him a sentence which was a legal sentence under sections 457 and 511 without proof of the

previous convictions, so that in fact it was unnecessary to call in aid Section 75* to pass the sentence which the learned Judge has done. At the same time, while that is true, there is no doubt that the Assistant Sessions Judge, as he says, in giving a severe sentence of six years, took into consideration, to my mind rightly, the fact that the a an had been twice previously convicted of a serious offence and in one of the previous cases he had received a sentence of five years rigorous imprisonment. The Assistant Sessions Judge refers to Ismail' Alibhai v. Emperor 26 Ind. Cas. 995. I think that the Judge having read Ismail Alibhai v. Emperor 26 Ind. Cas. 995 thought it would be convenient in practice and proceeded to avoid the obvious course of charging the man under Section 75 in order, I suppose, to see whether this Court would agree with Ismail Alibhai v. Emperor 26 Ind. Cas. 995 : 16 Bom. L.R 934. All that I say is I do not wish to have that kind of work thrown upon me and I hope that in further Magistrates and Judges will take the ordinary precaution of charging under Section 75. I shall not express any opinion about Ismail Alibhai v. Emperor 26 Ind. Cas. 995 because it is unnecessary for me to do so. But I think in this case as the sentence in itself is legal, I may uphold it, although I am quite conscious that both in the Judge's mind and in my own the gravity of one of the previous crimes undoubtedly carries weight, but that cannot be helped. I dismiss the appeal.

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