

Emperor Vs. Muthuswami

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Court : Chennai

Decided On : Oct-29-1934

Reported in : 155Ind.Cas.438

Judge : Pandrang Row, J.

Appellant : Emperor

Respondent : Muthuswami

Judgement :

Pandrang Row, J.

1. This is an application by the Crown Prosecutor, Madras, to enhance the sentence passed on the accused in C.C. No. 246 of 1934 on the file of the Chief Presidency Magistrate of Madras. The accused in the case was found guilty of having stolen some cash and clothes worth in all about 12 rupees belonging to P.W. No. 1 in the case while the latter was bathing at a bathing that in Madras. The Magistrate found the accused guilty of an offence punishable under Section 379, Indian Penal Code, and sentenced him to pay a fine of rupees thirty, and in default of payment thereof to undergo rigorous imprisonment of three months, and directed Rs. 12 out of the fine, if collected, to be paid as compensation to P.W. No. 1. It would appear that the fine has not been paid. The conviction and sentence are dated February 21, 1934, and it is clear that the accused in the case must have undergone the entire sentence of imprisonment.

2. The only ground on which it is contended before me that the sentence imposed by the learned Chief Presidency Magistrate is inadequate is that he failed to consider the antecedents of the accused which were mentioned to him orally by the Prosecuting Inspector of Police who conducted the prosecution. It would appear that the Prosecuting Inspector of Police in reply to a question put by the Court about the previous record of the accused for the purpose of determining the sentence, stated that the accused had four previous convictions in the Police Courts of Colombo, three for theft and one for cheating, the last of them being on September 24, 1932, for which he had been awarded six months' rigorous imprisonment. It is stated that the accused admitted these convictions but that the learned Chief Presidency Magistrate declined to take these convictions into consideration for the purpose of determining the sentence on the ground that these convictions were not convictions pronounced British India. It is contended that this view of the Magistrate, viz., that convictions had out of British India should not be taken into consideration in determining the punishment is wrong. If at all it was open to the Magistrate to take into consideration the previous antecedents of the accused, the convictions outside British India were relevant. But in view of the fact that these convictions could not be made the basis of any charge under Section 75, Indian Penal Code, evidence of these convictions could be admissible only as evidence of bad character, and as there is no provision of law which compels a Magistrate to consider the antecedents of the accused before determining the sentence to be imposed upon him, I am unable to say that the learned Chief Presidency Magistrate acted illegally in the exercise of his discretion in declining to consider the previous convictions in this case. The attempt of the prosecution was really to give these convictions outside British India the same effect for practical purposes as convictions within British India, that is to say, to induce the Magistrate to give a higher punishment than he would otherwise award. It may be that the Magistrate is not disentitled, if he thinks fit, to make such enquiries as he thinks proper, and as are not prohibited by the law, about the previous antecedents of the accused. But if he declines to look into these antecedents, he cannot be said to act illegally in the exercise of his discretion. The question of sentence is always within the discretion of the Court and ordinarily the sentence is determined only with regard to the facts and circumstances of each

case unless indeed there is a liability to enhanced punishment by reason of any specific provision of law such as Section 75, Indian Penal Code. Apart from these convictions outside British India it is not contended that the sentence is inadequate. The learned Chief Presidency Magistrate was not bound to consider these convictions in determining the sentence, even though it might have been open to him to have considered them. I am not prepared to interfere in revision and enhance the sentence in this case.

3. The Criminal Revision Petition is, therefore, dismissed.

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