

In Re: N. Venkadu and ors.

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SooperKanoon Citation : sooperkanoon.com/816221

Court : Chennai

Decided On : Sep-12-1929

Reported in : 121Ind.Cas.862

Judge : Curgenvan, JJ.

Appellant : In Re: N. Venkadu and ors.

Judgement :

Curgenvan, JJ.

1. The six petitioners have presented this petition against their convictions under Sections 147 and 323, Indian Penal Code, and sentences of two months' rigorous imprisonment and a fine each of Rs. 25, The ground taken is with reference to the terms of the charge and a certain finding of fact of the learned Sub-Divisional Magistrate in appeal. The charge alleges that the petitioners 'were members of an unlawful assembly and in prosecution of the common object of such assembly, viz., in wreaking vengeance for the social dishonour done to you at the social functions of the day, proceeded to the house of P.W. No. 1 at Kowali, arming yourselves with sticks, challenged P.W. No. 1 to come out, committed the offence of rioting and caused injuries on three of the prosecution witnesses.' The Stationary Sub-Magistrate found that the evidence established the various components of the charge, including the fact of social dishonour caused to the petitioners on the day previous to the occurrence. It appears that a woman had

died and a dinner and other ceremonies were to take place. There was some unpleasantness over the invitation of the accused to this dinner and when, after the dinner a ceremony called 'Saddulu' was performed they were not accorded due honours. The Sub-Divisional Magistrate, adverting to the circumstance that this affair of the 'saddulu' is not mentioned in the earlier reports, considers that it may have been a later development. He goes on to add that the evidence established ill feeling between the parties and that petty incidents due to it had taken place before the occurrence, among these incidents being the unpleasantness over the invitation to the dinner. It is at least doubtful, therefore, whether he does not find established some part of what the charge describes as social dishonour done at the functions of the day:

2. The error that was clearly committed in drafting the charge was to insert as the common object of the accused what was in fact nothing other than a motive. Accordingly, the phrase 'in wreaking vengeance for the social dishonour done to you at the social functions of the day' may be regarded as pure surplusage and in deciding what should have been the essential components of the charge may be omitted from consideration. We are left, therefore, with the allegation that the accused formed an unlawful assembly, went to the house with sticks, committed rioting and caused injuries to three witnesses. It is no doubt true that, as so revised, the charge does not explicitly recite a common object, which should properly have been to beat or injure these persons. The question is whether it was, therefore, so defective as to require that the accused should now be acquitted. Mr. Lakshmanan, for the petitioners, has showed me several decisions principally originating from the Calcutta High Court and one *In re Loganathaiyar* (1) from Madras, the substance of them being that, where the common object recited in the charge is different from the common object found, a charge of rioting cannot be sustained and the accused person should be acquitted. See for instance *Rahimuddin v. Asgar Ali* (2) and *Paresh Nath Sircar v. Emperor* (3). In the latter case, which was decided by three Judges, Bampini, J, who wrote a dissenting judgment, was of opinion that the provisions of Section 537 cured the defect inasmuch as the accused could not have been in any way prejudiced. In a later Calcutta case *Silajit Lahoti v. Emperor* (4) it was recognised that 'it is not a general proposition of law that a conviction under Section 147 of the Penal Code

cannot be supported whenever the common object, as stated in the charge, is not precisely made out. The question in each case is whether the common object established agrees in essential particulars with that laid in the charge.' The same principle was given expression to in *Babbon Shaikh v. Emperor* (5). I have been referred to no authority for the view that failure to define expressly and accurately the common object with which an unlawful assembly acts is not such an error, omission or irregularity as may be cured by Section 537, Criminal Procedure Code. I think, accordingly, that I should only be justified here in interfering in revision if it appears that the accused were prejudiced by the manner in which the charge was drafted. I am unable to discover any grounds for this view. It must have been quite clear that the case they had to meet was, as set out in the charge, that, as an unlawful assembly, they went into the house and injured the inmates, and I think it was equally clear that the common object imputed to them was that which they put into effect. I see, therefore, no sufficient reason to revise the convictions and I dismiss the revision petition.