

In Re: S. Raja Rao

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SooperKanoon Citation : sooperkanoon.com/817090

Court : Chennai

Decided On : Aug-18-1916

Reported in : 36Ind.Cas.159

Judge : Seshagiri Aiyar, J.

Appellant : In Re: S. Raja Rao

Judgement :

Seshagiri Aiyar, J.

1. As regards the argument that three charges in the three cases of theft, which took place at three different places and in the houses of three different persons, should not have been joined together, under Section 234, Criminal Procedure Code, it seems to me that a plain reading of Section 234 is in favour of trying together three offences of the same kind committed within a year, whether it be against one and the same individual or against different individuals. The explanation of the expression offences being of the same kind' is that they should be punishable under the same section of the Indian Penal Code. The view taken in *Empress of India v. Murari* (1881) A.W.N. 156 is that not only should the offences come under the same section of the Indian Penal Code, but the person against whom the offences were committed should be the same individual. With all deference I am unable to follow this ruling. I am strengthened in my view by the latest pronouncement of the Calcutta High Court in *Subcdor Ahir v. Emperor* 28

Ind. Cas. 668 : 19 C.W.N. 557, where the learned Judges hold, dissenting from the decision in *Empress of India v. Murari* (1881) A.W.N. 156 that a common trial of an accused for offences committed within a year, although the offences may have been against different individuals, is not obnoxious to Section 234 of the Criminal Procedure Code.

2. On the merits, the charge refers to three distinct offences committed in October and November. The evidence let in, so far as the first offence is concerned, is that of P. Ws. Nos. 1 and 2. They speak to the theft on the 29th Margali which would bring it to about the 12th January. Therefore, there is no evidence that the first of these offences was committed in October or November; the conviction for that offence must be set aside. As regards the other two offences there is evidence, which the Magistrate has believed and which I see no reason to disbelieve, that they were committed in October and November, and I sustain the conviction. As a result the sentence will be reduced by eight months. As regards the solitary confinement, under Section 73 of the Indian Penal Code, the utmost that could have been imposed upon the accused is three months; as I have held that one of the charges has not been proved, I think it will be enough if the accused is solitarily confined for two months. In other respects the petition is dismissed.