

In Re: Guruvappu Naicker

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SooperKanoon Citation : sooperkanoon.com/818108

Court : Chennai

Decided On : Mar-08-1929

Reported in : 118Ind.Cas.112

Judge : Wallace, J.

Appellant : In Re: Guruvappu Naicker

Judgement :

ORDER

Wallace, J.

1. The only substantial points of law that have been argued are two

(1) that the complaint is not in accordance with law and

(2) that the delay in directing this prosecution has resulted in gravely prejudicing the petitioner. As to

(1) the complaint is faulty in that, while extracting the sentence which, as will be seen from the Magistrate's order on the petition for sanction, forms the real subject-matter of the alleged prejury, it contains further extracts from the deposition of the petitioner which are not intended to be made matter of charge. There is here, however no doubt whatever as to which statement on oath, is to be the matter of charge in the trial because the order on the sanction petition makes

that blear. The question then is whether this Court should now direct the Magistrate to withdraw his complaint and present a revised one, a, proceeding which will cause further delay in the trial of the case or whether it is sufficient that this Court should here and now make it clear, that the charge in the trial must be restricted to the one statement, 'The Sub-Inspector of Police did not examine me' I think the latter cause is permissible and advisable and I record accordingly. As to point

(2) which no doubt in the interval between the disposal of petitioner's complaint in C. C. No. 307 of 1927 and the date of the present complaint, petitioner's father had died and he might have been able to give pertinent evidence in petitioner's favour, vide, his previous deposition Ex. 0, yet the occurrence of an event of that kind can obviously never be in itself, a reason for not sanctioning a prosecution and petitioner has further to make out that the delay was avoidable and deliberate. This he has not attempted to do. He has not even raised the point in either of the Courts of fact and he cannot, therefore, be allowed to press this contention in revision. It is argued that the Magistrate had under Section 476 of the Criminal Procedure Code no jurisdiction to put in a complaint relating to evidence taken by his predecessor. I am shown no direct authority for this proposition and am not prepared to accept it as a proposition of law.

2. Other matters raised, e.g., to as the materiality of the alleged perjured statement, and as to the motive for the alleged perjury and as to the nature of the evidence by which it is to be proved or rebutted are not matters which can properly be raised in revision. They are matters for consideration by the trial Court at the time of the trial. I am not prepared to interfere and dismiss this petition.