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In Re: Rangasami Padayachi and ors.

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Court : Chennai

Decided On : Nov-11-1915

Reported in : 31Ind.Cas.642

Judge : Kumaraswami Sastri, J.

Appellant : In Re: Rangasami Padayachi and ors.

Judgement :
ORDER

Kumaraswami Sastri, J.

1. The way in which Rao Saheb Raja Chariar, the first Class Sub-Divisional Magistrate, has disposed of this case is hardly satisfactory. The accused were charged with offences under Sections 148, 426, 506 and 326 of the Indian Penal Code. The 3rd accused is 18 years old, and 5th accused is 16 years, 6th and 7th accused 14 years and 8th accused 20. They are ignorant coolies. The Magistrate framed charges under the above sections on the 27th April 1915 in camp at Tranquebar and immediately asked the accused to cross examine the prosecution witnesses. They expressed inability to do so as their Vakil was not there and wanted time. The Magistrate insisted on their going on and there was no cross-examination. Only prosecution 3rd witness was asked a few questions by 2nd accused. On the 29th April 1915, their Pleader put in a petition to be allowed to cross-examine the prosecution witnesses. The Magistrate deferred passing orders

for one month and on the 29th May, he passed the following order: I do not think it necessary to call these witnesses again as they have been cross-examined already.' He does not state that the application was vexatious or for the purpose of causing delay, and it is impossible to see how he can with any sense of fairness, have refused the application on the ground that the witnesses had been cross-examined already. The charges were complicated and it is difficult to see how the accused could have cross-examined the witnesses with any effect. The whole procedure adopted by the Magistrate is, in my opinion, not only harsh but against the spirit of the provisions of Sections 256 and 257 of the Criminal Procedure Code, which give the accused an undoubted right to cross-examine the prosecution witnesses after a charge is framed.

2. Where charges framed are complicated and the accused are ignorant persons, a reasonable time should be given to the accused to get proper legal advice and assistance before they are called upon to cross-examine the prosecution witnesses. As observed in Arumugam Pillai v. Emperor 12 Ind. Cas. 524 : (1911) 2 M.W.N. 192 : 12 Cri. L.J. 548, it is not giving an accused person reasonable opportunity to ask him immediately after the charge is framed, to cross-examine witnesses and a reasonable time should be granted to enable the accused to engage a Pleader. The conviction in that case was set aside.

3. I think the accused were seriously prejudiced by the way in which the Deputy Magistrate acted. The Sessions Judge set aside the conviction on the charges under Section 506, in respect of all the accused except 3rd accused and under Section 326 in respect of accused Nos. 3 to 8 and converted the conviction under Section 148 into one of Section 147. If the Vakil for the accused had cross-examined the prosecution witnesses, it may well be that circumstances would have been brought to light which would have resulted in their acquittal.

4. I set aside the conviction and sentence. So far as the accused except 2nd accused are concerned, the learned Public Prosecutor does not press for a re-trial and I think he is perfectly right. I do not think it necessary to order their re-trial.

5. The 2nd accused will be tried for an offence under Section 325 by some other Magistrate.

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