

Narayan Reddy and ors. Vs. Enumula Bojamma

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Court : Chennai

Decided On : Apr-24-1925

Reported in : 90Ind.Cas.668

Judge : Krishnan, J.

Appellant : Narayan Reddy and ors.

Respondent : Enumula Bojamma

Judgement :

ORDER

Krishnan, J.

1. In this case an unfortunate error has crept in the procedure which has vitiated the trial. It resulted from the too frequent transfers of the Magistrates concerned in this case. The First Magistrate 'that tried the case framed the charge when he was transferred. When another Magistrate took up the case, an application was made to that Magistrate to order a trial de novo under Section 350, proviso (a) and that Magistrate ordered a de novo trial accordingly. But, before the trial began, that Magistrate was also transferred, and a Third Magistrate, a new man, was appointed as the Sub-Magistrate of the place when he took up the case for trial, his attention was drawn to the order passed by his predecessor granting a de novo trial; but instead of granting a de novo trial, what he did was merely to re-call the prosecution witnesses and give leave to the accused's Vakil to cross-examine

those witnesses. This is not the meaning of 'de novo' trial. De novo trial means' a new trial from the very beginning of the case. The object of granting a de novo trial is to enable the Magistrate who hears the case to see the way in which the witnesses give evidence before him, to mark their demeanour, and thereby to be in a position to judge of their credibility. That object is lost if the witnesses are not examined again but are only allowed to be cross-examined by the accused. Such a course is not in accordance with the provisions of Section 350, and in two cases to which my attention has been drawn, their Lordships have set aside the trial and ordered a new trial under similar circumstances: see *Hnin Yin v. Than Pe* 44 Ind. Cas. 337 : 6 Cr. L.J. 431 and *Sobh Nath Singh v. Emperor* (2). In the latter case their Lordships of the Calcutta High Court went to the length of holding that even if no objection was taken to the course adopted of merely allowing the witnesses to be cross-examined further, still the trial is vitiated. Here apparently the accused wanted to have the witnesses examined from the very first but that was not allowed by the Magistrate. This error in the procedure has vitiated the trial. I am, therefore, constrained to set aside the convictions of the accused in this case and direct them to be re-tried for the offences charged against them.

2. The papers will be sent to the Stationary Sub-Magistrate, Kadiri, for re-trial of the case.

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