

In Re: Dewasikhamani Asari

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SooperKanoon Citation : sooperkanoon.com/821828

Court : Chennai

Decided On : Aug-27-1925

Reported in : 95Ind.Cas.943

Judge : Jackson, J.

Appellant : In Re: Dewasikhamani Asari

Judgement :

Jackson, J.

1. Appeal against the judgment and sentence of the Sessions Judge of West Tanjore in Criminal Appeal No. 6 of 1924.
2. The appellant was convicted by the Sub-Divisional Magistrate, Pattukottai, and sentenced to undergo rigorous imprisonment for nine months under Section 409, Indian Penal Code. The learned Sessions Judge confirmed the conviction and reduced the sentence to the amount of imprisonment already undergone.
3. The appellant was an Amin of the Sub-Court at Kumbakonam and, admittedly, on the 27th February, 1923, he collected a sum of Rs. 190-4-0 in Papanasam. He did not pay this amount into Court until the 2nd of July 1923, and the lower Courts have found that he was guilty of criminal misappropriation. There is no evidence of what exactly he did with the money; but if an Amin collects a large sum of money and does not pay it into Court until five months have elapsed, it is a fair

presumption that he has misappropriated the amount, unless he can explain his action. The case of the defence was that the appellant was too ill in the intervening period to pay the money, but his own doctor, D. W. No. 7, says that the appellant came to him on the 25th April 1923 to get a certificate for the purposes of leave; and if he could do that, presumably the appellant could also have paid the money into the Subordinate Judge's Court. It is also not clear why if, as he says the appellant was taken violently ill after collecting the money at Papanasam, he was not heard of at Nagapatam. I find that the facts constitute an offence under Section 409 and the appellant was entrusted with the money. Other warrants which were entrusted to the appellant were returned by post, and both the lower Courts have assumed that the appellant himself was the real sender; but they have not discussed the question and no doubt on the record, the warrants were returned by one Sadasivam Pillai, Had that been the only circumstance pointing to the sanity of the appellant I should have felt constrained to allow this petition; but as I have said before, he was perfectly sane in April. The learned Sessions Judge refers to the argument that the appellant became ill and was mentally deranged at the time he collected the money and that he lost it, and this, of course, is based on the defence evidence which must have been referred to at the time. It cannot be said that the learned Judge wholly failed to take into consideration the defence in the case. No doubt, the appellant voluntarily surrendered himself, but it was long after the commission of the offence.

4. The Appellate Court allowed that this was a case for lenient treatment and remitted a considerable part of the appellant's sentence. There is no ground for interference and the petition is dismissed.