

In Re: Akula Venkana

In Re: Akula Venkana

SooperKanoon Citation : sooperkanoon.com/821877

Court : Chennai

Decided On : Oct-18-1926

Reported in : 100Ind.Cas.384

Judge : Curgenvan, J.

Appellant : In Re: Akula Venkana

Judgement :

ORDER

Curgenvan, J.

1. The complainant preferred a complaint of voluntarily causing simple hurt under Section 323, Indian Penal Code, and being absent on the occasion when the case was taken up, the Sub-Magistrate dismissed it under Section 259, Criminal Procedure Code, and discharged the accused. Subsequently, the complainant filed a fresh complaint in the same terms with an application that it should be restored to file and the Sub-Magistrate deeming the explanation for his absence to be satisfactory took the case on file again and eventually convicted the accused. The contention in this criminal revision case is that he was incompetent so to restore the case after having passed an order of discharge under Section 259, Criminal Procedure Code. This point was not taken either in the trial Court or in appeal and it admittedly does not affect the merits of the conviction; nor, I think, has it any basis in law. It has been held in the Full Bench case, Emperor v. Chinna

Kaliappa Gounden 29 M. 126 : 16 M.L.J. 79 : 1 M.L.T. 31 : 3 Cri. L.J. 274 that after dismissing a complaint under Section 203, Criminal Procedure Code, the Magistrate may restore that complaint to file notwithstanding that the order of dismissal has not been set aside by higher Court. Two of the five Judges who composed that Bench expressed the opinion that the same rule would apply to a discharge under Section 259, Criminal Procedure Code, while two were of a contrary opinion; the fifth expressly refraining from deciding the point. Subsequently in *In re Rudra Gowd* 18 M.L.J. 561 : 4 M.L.T. 140 : 8 Cri. L.J. 208 a Bench of this Court, following the opinion expressed by Sir Arnold White, C.J., in the afore-mentioned case and in another case in which he was sitting singly, has held that a Magistrate who has discharged an accused person under Section 259, Criminal Procedure Code, is competent to entertain a fresh complaint on the same facts. This would be a direct authority against the present contention were it not that some slight doubt appears as to whether the Magistrate entertained a fresh complaint or restored the old complaint. It appears to me, however, that that makes no substantial difference and indeed the Full Bench decision under Section 203, Criminal Procedure Code, related to a case of the restoration of the original complaint. I consider accordingly that the Sub-Magistrate was competent to act in the manner he did and I dismiss this criminal revision petition.