

APPELLATE CRIMINAL.

Before Mr. Justice Munro and Mr. Justice Abdur Rahim.

PADMANABHA PANJIKANNAYA

v.

EMPEROR.*

Criminal Procedure Code, Act V of 1898, ss. 237, 238, 423—Person convicted of an offence cannot on appeal be convicted of abetment of such offence.

The power of an Appellate Court under section 423 of the Code of Criminal Procedure to alter a finding must be used in accordance with the provisions of sections 237 and 238 of the Code.

Where a person who has been convicted of an offence has appealed, the Appellate Court cannot, after acquitting him of such offence, convict him of the abetment of such offence.

APPEAL against the conviction and sentence of H. O. D. Harding, Sessions Judge of South Canara division, in Calendar Case No. 14 of 1909.

The facts for the purpose of this report are fully set out in the judgment.

Dr. Swaminadhan and B. Sitarama Rau for appellant.

The Public Prosecutor *contra*.

Annaji Rau for complainant.

JUDGMENT.—In this case the appellant and another were charged with offences under sections 467 and 468 of the Indian Penal Code. The appellant was convicted under these sections. Such evidence as there is however shows that the alteration of the document was made not by the appellant, but by the man who was charged along with him. The conviction of the appellant under sections 467 and 468 of the Indian Penal Code was therefore wrong. We are asked however to consider the propriety of convicting the appellant for abetment of these offences. We have not been referred to any authority in support of the proposition that when a person has been charged with a certain offence and has been convicted of that offence the Appellate Court can, on finding that the conviction is not sustainable, convict the accused of abetment of that offence. No doubt, under section 423 of the Criminal Procedure Code, the Appellate Court has power to alter a finding, but

we take it that that power cannot be used arbitrarily but only in accordance with other provisions of the Code. Those provisions are to be found in sections 237 and 238 of the Criminal Procedure Code, and neither of these covers a case like the present. The ruling in *Regina v. Chand Nur* (1) is clear authority for holding that it is not open to a Court to find a man guilty of the abetment of an offence on a charge of the offence itself, and we agree with the reasoning on which the ruling is based. We set aside the conviction and acquit the accused of offences under sections 467 and 468 of the Indian Penal Code. His bail bond is discharged.

MUNRO
AND
ABDUR
RAHIM, JJ.
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PADMANABHA
PANJ-
KANNAYA
v.
EMPEROR.

APPELLATE CIVIL—FULL BENCH.

Before Sir Ralph Sillery Benson, Officiating Chief Justice, Mr. Justice Wallis and Mr. Justice Sankaran-Nair.

KAILASAM PILLAI (SECOND RESPONDENT), APPELLANT,

v.

NATARAJA THAMBIRAN AND OTHERS (DEFENDANTS Nos. 1 TO 3 AND FIRST PLAINTIFF), RESPONDENTS.*

1909.
March 29, 30.
August 2,
September
13, 14,
October 27.

Mutt, head of, whether trustee or life tenant of mutt properties.

It cannot be predicated of the head of a mutt, as such, that he holds the mutt properties as a life tenant or trustee. The question must be determined in each case upon the conditions on which they were given or which may be inferred from the long established usage and custom of the institution.

Giyana Sambandha Pandara Sannadhi v. Kandasami Tambiran, [(1887) I.L.R., 10 Mad., 375], referred to.

Vidyapurna Tirtha Swami v. Vidyanidhi Tirtha Swami, [(1904) I.L.R., 27 Mad., 435], referred to.

APPEAL presented against the decree of J. Hewetson, District Judge of Madura, in Original Suit No. 1 of 1905.

The appeal came on for hearing in the first instance before (Munro and Abdur Rahim, JJ.) who made the following:—

ORDER OF REFERENCE TO A FULL BENCH.—In Appeal No. 91 of 1906 the question has been raised as to the correctness of the

(1) (1874) II B.H.C.R., 240.

* Appeal No. 91 of 1906.