DHARMA-KARTA OF TINNANORE TEMPLE v. LUCHIMI DOSS.

Doss(1) as to the construction of the agreement relied on, we find that there is no ground for this second appeal and we dismiss it with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Bhashyam Ayyangar and Mr. Justice Moore.

1902. July 22.

IN THE MATTER OF GOVINDU AND ANOTHER, PRISONERS.*

Criminal Procedure Code—Act V of 1898, *ss.* 195, 233 *to* 239—*Joinder of offences and accused—Preliminary enquiry—Power of Sessions Court to try offenders separately where jointly committed for trial—s.* 195—*Sanction to prosecute—Notice to accused—Necessity.*

The sections of the Code of Criminal Procedure which relate to joinder of charges (including section 239) refer to the trial of the accused. The ruling in *Subrahmania Ayyar* v. *Emperor*, (I.L.R., 25 Mad., 61), cannot be extended to a preliminary enquiry held by the Magistrate committing a case to a Sessions Court, so as to render the commitment itself illegal because there was misjoinder of offences or of offenders. In such a case, the Sessions Judge, if he considers it necessary, can frame charges against and *try the accused separately*.

There is no hard and fast rule that notice must be given in all cases to an accused person before sanction is accorded for his prosecution.

REFERENCE to the High Court for orders. It appeared from the letter of reference that two police constables had been committed to the Sessions Court of Kistna, by the Head-quarters Deputy Magistrate, for trial for an offence punishable under section 193 of the Indian Penal Code. The alleged false statements were made before the Bandar Bench Magistrates in a criminal case. An application for sanction to prosecute the two constables under section 211 of the Indian Penal Code was thereupon made to the Stationary Sub-Magistrate of Bandar, but was rejected on the ground that the falsity of the statements was not apparent from a perusal of the record in the Bench case, and, under the Ruling in *In the matter of the petition of Jai Prakash Lal*(2) the Sub-Magistrate was precluded from travelling beyond that record.

* Criminal Revision Case No. 272 of 1902. Case referred No. 82 of 1902 for the orders of the High Court, under section 438 of the Code of Criminal Procedure, by J. H. Robertson, Acting Sessions Judge of Kistna in his letter, dated 20th June 1902.

(1) Second Appeal No. 689 of 1901 (unreported).

(2) I.L.R., 6 All., 29.

Subsequently, under instructions from the Head-quarters Deputy Magistrate, the Sub-Magistrate held a preliminary enquiry under section 476 of the Code of Criminal Procedure, and sent the constables before the Deputy Magistrate to be tried for an offence under section 211. The Deputy Magistrate held that the facts did not disclose the commission of an offence under section 211, but one under section 193, and that as the accused were entitled to a separate trial, he could not himself deal with them except by commencing proceedings afresh. This, however, for reasons which he recorded, he refused to do, and, instead, committed the accused to the Court of Session on a joint charge. One question referred was whether this joint committal was legal, having regard to section 239 of the Code of Criminal Procedure; and to the Ruling in *Subrahmania Ayyar* v. *King-Emperor*(1). A second question had reference to the sanction. It appeared that up to the time of committal to the Court of Session, the sanction accorded related to an offence under section 211 of the Indian Penal Code, and that no sanction had been accorded for an offence under section 193. Subsequently to the committal, however, the Public Prosecutor moved the Stationary Sub-Magistrate to accord sanction under the latter section, which he did. Objection was taken to this sanction, as it had been accorded without notice to the accused (*Pampapati Sastri* v. *Subba Sastri*(2)).

The parties are not represented.

BHASHYAM AYYANGAR, J.—I do not think that there are proper grounds for quashing the order of commitment and directing fresh enquiry separately against the two accused. So far as the question of sanction is concerned I do not think there is any validity in the objection. Apart from the sanction which has been obtained since the order of commitment (which sanction under the Ruling in *Pampapati Sastri* v. *Subba Sastri*(2) cannot, I think, be held to be invalid by the Court which has to try the accused merely because the sanction was obtained without giving notice to the accused), the accused are not entitled to plead that they cannot be tried and convicted in the absence of a sanction under section 195, Criminal Procedure Code, for their being prosecuted for the offence of giving false evidence. The case was sent to the Committing Magistrate under section 476, Criminal Procedure

(1) I.L.R., 25 Mad., 61. (2) I.L.R., 23 Mad., 210.

IN THE MATTER OF GOVINDU.

Code, on the same facts as those on which they have been charged by the Committing Magistrate with an offence under section 193, Indian Penal Code, instead of section 211, Indian Penal Code, the section mentioned by the Magistrate while sending the case under section 476, Criminal Procedure Code. The Committing Magistrate, who was bound to proceed according to law, was authorized to commit the case to the Sessions Court under section 347, Criminal Procedure Code, charging the accused with the offence which, according to law, they were guilty of on the facts with reference to which proceedings were taken against them under section 476, Criminal Procedure Code (*vide* also section 195 (5), section 230 and section 537 (*b*), Criminal Procedure Code). As regards the question of misjoinder it is quite clear that in the case of an offence under section 193, Indian Penal Code, the two accused cannot be tried jointly but ought to be charged and tried separately. The Sessions Judge ought to frame separate charges against them and try them separately just as if there had been two commitments, I do not think that the commitment should be quashed as illegal because the Magistrate held proceedings against the two accused jointly. The sections of the Criminal Procedure Code relating to joinder of charges, viz., 233, &c., and including section 239, refer to the trial of the accused. The ruling of the Privy Council in *Subrahmania Ayyar* v. *King-Emperor*(1) followed recently by the High Court of Calcutta in *Gobind Koeri* v. *Emperor*(2) cannot, I think, be extended to preliminary enquiries held by Magistrates committing a case to the Sessions Court so as to render the commitment itself illegal, because there was misjoinder of offences or of offenders in the preliminary enquiry.

MOORE, J.—I agree. When the case came before him the Sessions Judge, if he considered that the accused persons should be tried separately, should have framed charges accordingly and gone on with the trial. The Criminal Procedure Code gives him full powers to do this. There is no hard-and-fast rule that notice must be given in all cases to an accused person before sanction is granted. The committal is not irregular and the Sessions Judge should proceed to try the case.

(1) I.L.R., 25 Mad., 61. (2) I.L.R., 29 Calc., 385.