

purposes. We think the "assistance" referred to in the former part of the section is *ejusdem generis* with the various forms of assistance specified in the latter half. The "assistance" must have some direct personal relation to the execution of the duty by the public officer. The signing of the search list required by section 103 is an independent duty imposed on the witness. The word "assistance" as used in the section implies that the party who assists is doing something which, in ordinary circumstances, the party assisted could do for himself.

Our answer to the question referred is, that on the facts stated, the accused was not guilty of an offence under section 187 of the Indian Penal Code.

IN THE
MATTER OF
RAMAYA
NAIKA.

APPELLATE CRIMINAL.

*Before Mr. Justice Subrahmaniam Ayyar and Mr. Justice
Bhushyam Ayyangar.*

VEMURI SESHANNA AND ANOTHER, ACCUSED IN CRIMINAL CASE
No. 180 OF 1902.*

1902.
January 16.

Criminal Procedure Code—Act V of 1898, s. 423 (b)—Conviction of two accused and order against both accused to pay Court and process fees in equal shares—Acquittal of one accused on appeal—Order by Appellate Court for entire Court and process fees—Legality—"Enhancement of sentence."

A Magistrate convicted two accused, and, in addition to the sentences which he passed on them, ordered them to pay the Court and process fees in equal shares. The Appellate Court acquitted one of the accused and ordered the other accused (whose conviction was affirmed) to pay the whole amount of the Court and process fees :

Held, that the order of the Appellate Court was legal under section 423 (a) of the Criminal Procedure Code and did not amount to an enhancement of sentence within the meaning of section 423 (b). Fees ordered to be paid under section 31 (iv) of the Court Fees Act are recoverable as if they were fines imposed by the Court, but they are not part of the fine imposed as a punishment for the offence.

* Case referred for the orders of the High Court, under section 438 of the Code of Criminal Procedure, by R. Morris, District Magistrate of Kistna, in his letter, dated 29th November 1902, Revision Case No. 1329 of 1902 (Criminal Revision Case No. 567 of 1902).

VEMURI
SESHANNA.

Queen-Empress v. Tangavalu Chetti, (I.L.R., 22 Mad., 153), and the *High Court Ruling*, 20th July 1870, (5 M.H.C.R., App. 28), distinguished.

SENTENCE, on two accused, to undergo imprisonment and to pay a fine, respectively, and to pay Rs. 3-2-0 in equal proportions on account of Court and process fees. On appeal, the Head Assistant Magistrate altered the conviction in the case of the first accused, but confirmed the sentence, and quashed the conviction in the case of the second accused. He also directed that the Court and process fees should be paid by the first accused alone to the complainant. The District Magistrate referred the case for orders, as he entertained a doubt as to the legality of the Head Assistant Magistrate's order, as the order to pay the costs was an integral part of the sentence, and to enhance the liability of the first accused by ordering him to pay the whole of the Rs. 3-2-0 instead of only a half of it was to enhance his sentence, which an Appellate Court is debarred, under section 423 of the Criminal Procedure Code, from doing. He referred to *Queen-Empress v. Tangavalu Chetti*(1).

The Court made the following

ORDER.—We think that the action of the Appellate Magistrate is legal under section 423 (d), Criminal Procedure Code, and it does not amount to an enhancement of sentence within the meaning of section 423 (b). Under section 31 (iv) of the Court Fees Act, the fees ordered to be repaid under that section are to be recovered as if they were fines imposed by the Court, but there is no warrant for treating the same as part of the fine imposed as a punishment for the offence. The present case is distinguishable from *Queen-Empress v. Tangavalu Chetti*(1) and from the *High Court Ruling*, 20th July 1870(2), though the view which we take is in apparent conflict with them. We therefore see no reason to interfere.

(1) I.L.R., 22 Mad., 153.

(2) 5 M.H.C.R., App. 28.