

APPELLATE CRIMINAL.

Before Mr. Justice Jackson.

1931,
February 10.

IN RE KONDA SATYAVATAMMA (ACCUSED), PETITIONER.*

Indian Penal Code (Act XLV of 1860), sec. 117—Abetment by more than ten persons of an offence—Madras Salt Act (IV of 1889), sec. 74, if supersedes section 117 of the Indian Penal Code—Punishment for abetment.

The gravamen of a charge under section 117 of the Indian Penal Code is the abetment itself, the instigation to general lawlessness, not the particular offence of which the commission is instigated.

Section 74 of the Madras Salt Act refers to the direct abetment of particular acts and does not embrace the offence under section 117 of the Penal Code; and any person instigating more than ten persons to commit an offence under the Madras Salt Act is liable to imprisonment for three years under section 117 of the Indian Penal Code.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure, 1898, and section 107 of the Government of India Act praying the High Court to revise the judgment of the Court of Sub-divisional Magistrate of Guntur, dated 23rd September 1930, in Criminal Appeal No. 23 of 1930.

K. S. Jayarama Ayyar and B. T. M. Raghavachari for petitioner.

Advocate-General (A. Krishnaswami Ayyar) and Public Prosecutor (L. H. Bewes) for the Crown.

Cur. adv. vult.

JUDGMENT.

The petitioner was sentenced to six months' rigorous imprisonment and Rs. 50 fine under section 117, Indian Penal Code.

* Criminal Revision Case No. 730 of 1930.

In the trial Court she did not cross-examine the prosecution witness before the charge, and after framing it the Court omitted to give her further opportunity, hence the case has been remanded for a retrial. She now raises a point that was not taken at the trial. In such circumstances it is doubtful if this Court should interfere in revision. To allow parties in petty magisterial cases to reserve their defence till they can bring it up to the High Court upon revision would be to turn topsyturvy the judicial system of this Presidency, and, apart from other considerations, this Court is not so fully abreast of its ordinary work as to afford the time for trying the cases of second-class magistrates.

However the case has been admitted and argued and therefore I will not dismiss it on this short but cogent point.

It is argued on behalf of the petitioner that section 117, Indian Penal Code, has been superseded by section 74 of the Madras Salt Act, and any person instigating more than ten persons to commit an offence under the Salt Act is not liable for three years' imprisonment under section 117 but only to six months under section 74. The argument proceeds, as I think it is bound to proceed, to the length of saying that the Local Legislature deliberately reduced the sentence in the case of abetment of offences against the Salt Act, in the view that such abetment was less criminal than abetment of other offences. It seems to be a fantastical notion. The gravamen of a charge under section 117 is the abetment itself, the instigation to general lawlessness, not the particular offence of which the commission is instigated. The illustration to the section is an example of what those who consider themselves entitled to discriminate between offences would call a minor offence, the attack by the adherents

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of one religious sect upon those of another, for which of course, all the time-honoured excuses for law breaking and anarchy—conscience, pure motive, and disinterested zeal—can be requisitioned. Nevertheless the section makes the public instigation to such an attack punishable by three years' imprisonment, and it is impossible to believe that any Government ever thought that the public instigation to offences against the Salt Law should be punishable with less. Section 74 of the Madras Salt Act no doubt runs, "Any person who within the meaning of the Indian Penal Code abets the commission of offences under the Act," but that obviously refers to the direct abetment of particular acts; and to try and make it embrace the offence under section 117, Indian Penal Code, is merely a legal quibble. Section 117, Indian Penal Code, was never contemplated by the Local Government when it enacted the Salt Act. *Emperor v. Ganesh*(1) is to the same effect.

The petition is dismissed.

K.N.G.

(1) (1930) 33 Bom. L.R. 56.
