

(1925) 01 MAD CK 0008

Madras High Court

Case No: None

Krishnamurthi Iyer

APPELLANT

Vs

Narayanaswami Iyer

RESPONDENT

Date of Decision: Jan. 23, 1925

Acts Referred:

- Penal Code, 1860 (IPC) - Section 504

Citation: 90 Ind. Cas. 914 : (1925) 22 LW 402

Hon'ble Judges: Devadoss, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Devadoss, J.

This is an application to revise the order of the Second Class Magistrate of Papanasam, who convicted the petitioner u/s

504, Indian Penal Code, confirmed by the Sub-Divisional Magistrate of Tanjore. The Magistrate inquired into the complaint preferred by the

complainant and framed a charge under Sections 352 and 504. At the time of writing the judgment, he discovered, that the occurrences were

different and that the charges under Sections 504 and 352 could not be tried together and finding the illegality of the charges he struck out the

charge framed, and framed a charge u/s 504 alone, against the accused and asked the accused whether the prosecution witnesses were to be re-

called and examined and whether he had any defence witnesses to examine. The accused stated that he did not want to examine the witnesses and

the Magistrate convicted him u/s 504.

2. It is contended before me that this procedure is irregular. Under the Cr. P.C. a Magistrate is entitled to try an accused for more than one offence in one trial, if the offences have been committed in the course of the same transaction or three different offences of the same kind committed during the course of a year. Here the offences were of different kinds committed at different times. The one was an assault and the other one was an abuse. Therefore the Magistrate was wrong in trying the two charges in one trial. When he discovered the irregularity of it, instead of starting a fresh enquiry in respect of the two offences, that is, separate enquiries, one in respect of Section 504 and another in respect of Section 352 he struck out the charge framed already and framed a charge u/s 504. This procedure is not sanctioned by Section 227, Cr. P.C.; and what could be done u/s 227 is only to alter or modify the charge at any time before judgment. But it does not permit the Court to try two distinct offences which are in no way connected with one another, in the same trial. That the procedure adopted by the Sub-Magistrate is illegal is clear from the judgment of the late Chief Justice in Manavala Chetty v. Emperor 29 M. 569 : 1 M.L.T. 409 : 5 Cr. L.J. 94.

3. The conviction is, therefore, set aside and considering the length of time that has elapsed since the occurrence I do not think I should order a re-trial. The fine imposed on the petitioner will be refunded to him.