
(1946) 08 MAD CK 0012

Madras High Court

Case No: None

Pentakota Latchanna
and Another

APPELLANT

Vs

Vugginna
Kannayamma

RESPONDENT

Date of Decision: Aug. 15, 1946

Acts Referred:

- Penal Code, 1860 (IPC) - Section 352, 426

Citation: AIR 1947 Mad 120 : (1947) ILR (Mad) 502 : (1946) 59 LW 560 : (1946) 2 MLJ 279

Hon'ble Judges: Yahya Ali, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Yahya Ali, J.

The petitioners were first indicted under Sections 426 and 352 of the Indian Penal Code and the summons procedure was

followed upto a certain stage. Subsequently the trying Magistrate felt that the evidence disclosed offences under Sections 379 and 352 of the Code

and decided to adopt the warrant case procedure. It is admitted that thereafter the provisions of Chapter XXI were duly followed and ultimately

the petitioners were convicted under Sections 379 and 352 of the Code. Objection was taken to this course and it was pointed out that under

Sections 244 and 245 of the Code of Criminal Procedure the Magistrate was bound, at the stage when he attempted to convert the summons case

into a warrant case when he found that no case had been made out under Sections 426 Indian Penal Code, to acquit the accused and he was not

entitled to register a case u/s 379 and proceed under Chapter XXI. With regard to this contention at one time it found acceptance in this Court. In

Rajaratnam Pillai, In Re: Rajaratnam Pillai, Kins J said this:

"Triable under this chapter" means, of course, any offence triable under the procedure laid down for the trial of summons cases, and, although

Section 246 does not contain any explicit prohibition of the procedure now complained against, it is quite obvious that such prohibition is implied in

it and that, once a Magistrate has taken cognizance of a summons case, he cannot convict an accused person for anything but an offence triable as

a summons case.

This view was dissented from by Burn, J., in Venkataramanier v. Varadarajulu Chetti 1938 M.W.N. 109. Referring to the decision cited above,

the learned Judge observed,

With all respect to King, J., I am unable to follow the reasoning in In Re: Rajaratnam Pillai, If a Magistrate begins a trial as a summons case and

then finds that an offence triable only under warrant case procedure has been committed, he is, I think, bound to apply warrant case procedure

thenceforward and he is not in any way disqualified from proceeding with the trial.

The question came up later before King, J., in Malai v. Emperor (1937) M.W.N. 981, and he reconsidered the opinion expressed by him in

Rajaratnam Pillai, In Re: Rajaratnam Pillai, , and stated that the position had been set out in that case with some lack of precision. He did not

adhere to the view that once a Magistrate has taken cognizance of an offence which is triable only according to the procedure applicable to

summons case he must stick to that procedure. The learned advocate for the petitioners tried to show that the facts of the case before Burn, J., and

the later case before King, J., were slightly different from the present case but I see no difference in principle. This contention must, therefore, be

negatived.

2. On the merits, there is hardly anything to consider. The learned Joint Magistrate has found that the removal of the crop was not with a view to

establish a right or supposed right and the trial Court has found that the removal was done with a dishonest intention. An offence u/s 352 of the

Indian Penal Code has also been made out.

3. I see no reason to interfere with the conviction of the petitioners. The sentences are not unreasonable. The petition is dismissed.