
(1941) 11 MAD CK 0025
In the Madras High Court

Bobba Kutumbayya and Others

APPELLANT

Vs

Ketavarapu Lakshminarasimha Rao

RESPONDENT

Date of Decision : 08-11-1941

Acts Referred:

Citation : AIR 1943 Mad 6 : (1942) 55 LW 525 : (1942) 2 MLJ 221

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The petitioner was charged before the Stationary Sub-Magistrate of Gannavaram under (Section 447, Indian Penal Code. At the third or fourth adjournment the complainant was absent; and so the Magistrate acquitted the accused u/s 247, Criminal Procedure Code. The complainant had sent a telegram asking the Magistrate to adjourn the case which reached the Magistrate five minutes after the order of acquittal was pronounced. The successor of the Magistrate who acquitted the accused thereupon permitted the complainant to file a fresh complaint and took cognizance of the case on the new complaint. The accused has filed this petition, contending that the Magistrate had no jurisdiction to entertain the second complaint; for the accused had been acquitted and his second trial was barred by Section 403, Criminal Procedure Code.

2. As the trial in a summons case commences with the issue of notice to the accused, it is clear that the accused was both tried and acquitted, and that therefore Section 403 would operate as a bar to a further trial. The Magistrate purported to follow Cr.R.C. No. 867 of 1916, in which a Bench of this Court held that an acquittal u/s 247 was not a bar to a fresh trial. That case has never been followed by this Court. It was considered and differed from In Re: Dudekula Lal Sahib, , which has been followed consistently by this Court. Guggilapa Peddaya of Palakot I.L.R.(1910) Mad. 253 and In Re: Sinnu Gowndan and Another, .

3. There is another reason why this petition must be allowed. The Magistrate, by allowing the case to be reviewed after his predecessor had acquitted the accused and closed the case, was in effect revising or reviewing his predecessor's order.

As pointed out by Wallace and Jackson, JJ., in Ekambara Mudali Vs. Alamelammal and Another, , Subordinate Courts have no power of reviewing their own judgments. If they pass a wrong order and wish to set it right, they must apply to the District Magistrate to refer the matter to the High Court for correction.

4. The present proceedings now pending before the Stationary Sub-Magistrate of Gannavaram are quashed.