

(1946) 09 MAD CK 0018
In the Madras High Court

In Re: Bommareddi Satyanarayana Reddi

Date of Decision : 04-09-1946

Acts Referred:

Penal Code, 1860 (IPC) — Section 325, 355

Citation : AIR 1947 Mad 174 : (1946) 59 LW 646 : (1946) 2 MLJ 364

Hon'ble Judges : Yahya Ali, J

Bench : Division Bench

Judgement

Yahya Ali, J.—This is an application to quash two additional charges framed by the Sub-Magistrate of Bezwada against the petitioner who is the accused in C.C. No. 9 of 1946 on the file of that Court. The case started on a private complaint in which the petitioner was charged with having committed offences under sections. 323, 325 and 355 of the Indian Penal Code. After hearing the evidence adduced for the complainant, the Magistrate framed a charge only u/s 323, but subsequently, he added the charges under Sections 325 and 355 and it is with reference to these additional charges that this application is filed.

2. The contention of the learned advocate for the petitioner is that the act of the Magistrate in framing a charge only u/s 323 when the complaint alleged three specific offences, amounted to a discharge of the petitioner under Sections 325 and 355, and after that discharge was made the Magistrate had no jurisdiction to frame the additional charges. He contends that that would amount to a reviewing of the case for discharge which the Magistrate was not competent to do. The machinery provided under the Code of moving higher authorities to set aside the order of discharge it is urged should have been availed of by the complainant if he felt aggrieved. The learned Public Prosecutor points out that even assuming for argument's sake that the framing of the charge at the earlier stage u/s 323 alone amounted to an implied discharge under Sections 325 and 355 of the Indian Penal Code, it has been held in a number of cases in this Court that that would not preclude a fresh complaint being made in respect of those offences. In *Emperor v. Chinna Kaliappa Gounden* (1905) 16 M.L.J.79 : ILR 29 Mad.126 and in *In re Ponnuswami Goundan* (1931)62 M.L.J.469 : I.L.R.55 Mad.622 two Full Bench cases of this Court, it was held that in such circumstances the filing of a

fresh complaint is not prohibited, and that such would be the case even where the order of dismissal of the complaint had not been set aside. Further it has to be pointed out that Section 227 of the Code of Criminal Procedure empowers the Court at any time before judgment is pronounced to alter or add to any charge. Necessary safeguards are provided in Section 228 to avoid any prejudice being caused to the accused by reason of the alteration or addition. The learned advocate for the petitioner argues that the expression " add to " in Section 227 means the addition of a few words to the existing charge and not the addition of a new charge. I cannot accept this argument. If what was intended was to empower the Court only to make some corrections or additions to the existing charge, the word " alter " occurring in the section would have met the requirements and it was not necessary to enact the words " add to ". Redundance cannot be attributed to the Legislature and it is clear from the sections that follow Section 227 that what the Legislature intended was that the Court may add a new charge at any time before judgment is pronounced provided that the safeguards mentioned in Section 225 were duly observed. It may be pointed out that in Section 229 and Section 230 of the Code reference is made to a " new charge " in addition to an altered or an added charge. This clearly shows that in Section 227 in the words " added to " the concept of a new charge is implicit. I find no force in the contention of the learned advocate for the petitioner that t the Magistrate had no jurisdiction to add these new charges at a later stage after once he had framed only one charge u/s 323 of the Indian Penal Code.

3. The petition is dismissed.