

(1946) 03 MAD CK 0027
In the Madras High Court

In Re: Neeladri Appadu and Others

Date of Decision : 19-03-1946

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 421

Citation : AIR 1947 Mad 243 : (1947) ILR (Mad) 156 : (1946) 59 LW 459 :
(1946) 2 MLJ 169

Hon'ble Judges : Shahabuddin, J

Bench : Division Bench

Judgement

Shahabuddin, J.—This is a reference by the Sessions Judge of Vizagapatam. in respect of C.A. Nos. 132 and 154 of 1945, in his Court,

which were filed by the respondents against the order of the Sub-Divisional Magistrate of Vizianagaram in M.C. No. 38 of 1945 on his file. In that

case, it was alleged that the respondents were persons coming under Clauses (a) and (f) of Section 110 of the Code of Criminal Procedure, and

that they should be called upon to furnish security for good behaviour. The Magistrate believed the evidence adduced by the prosecution and

directed the respondents to execute bonds in the sum of Rs. 100 with two sureties each, and as they failed to do so, he committed them to prison

to undergo rigorous imprisonment for one year each. C. A. No. 132 of 1945 against this order was received from jail on nth October, 1945, and

the learned Sessions Judge dismissed it summarily u/s 421 on the 19th October, 1945. On the 23rd November, the other appeal was presented in

Court by counsel on behalf of the same respondents against the same order. This was taken on file on 27th November, and notice was issued the

same day. The learned Judge, after hearing the case on merits, set aside the order of the Magistrate as far as respondents 1 and 2 were concerned

and confirmed it as against the third respondent. When he dealt with the later

appeal, No. 152 of 1945, it was not brought to his notice that the same matter had already been disposed of by him u/s 421 of the Criminal Procedure Code. Discovering this later, he has made this reference. His letter of reference does not indicate which of the two decisions he wants to be upheld. He however refers to a decision of the Allahabad High Court in *Lachhman Chamar Vs. Emperor*, , stating that, according to that decision, the dismissal of a jail appeal u/s 421 of the Code does not bar the hearing of an appeal filed by counsel in the same matter.

2. The order in the later appeal was in our opinion an order passed without jurisdiction. It is no doubt true that the decision of the Allahabad High Court referred to by the learned Judge, does contain observations in support of the view that the dismissal of a jail appeal does not bar the hearing of the appeal in the same case on merits, but these observations were based on the practice obtaining in that Court. It is, however, clear that the practice in this Court has been otherwise. In *In re Kunhamad Haji* (1922) 44 M.L.J. 450 : ILR 46 Mad. 382, a Bench of this Court held that, where an appeal has been disposed of, the Court is *functus officio* and cannot hear the appeal again. The same view was taken by another Bench of this Court in *In re Somu JVaidu* (1923) 46 M.L.J. 456 : ILR 47 Mad. 428. Following these two decisions, with which we respectfully agree, we hold that the order of the learned Judge in the later appeal was one without jurisdiction and has, therefore, to be set aside.

3. In view of this conclusion, the order dismissing the earlier appeal of the respondents should normally stand; but, having gone through the judgment in the later appeal, we find that the learned Judge had strong reasons for not accepting the case for the prosecution as far as respondents 1 and 2 were concerned. In the circumstances, we consider that ends of justice require our interference. We, therefore, in the exercise of our powers of revision, revise the order in the earlier appeal by allowing it as far as respondents 1 and 2 are concerned and setting aside the order of the Magistrate as against them. The order dismissing the appeal of the third respondent will stand. Respondents 1 and 2 will be released forthwith.