

N.M.V. Vellayappa Chettiar Vs. Alagappa Chettiar

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Court : Chennai

Decided On : Jul-04-1941

Reported in : AIR1942Mad289

Appellant : N.M.V. Vellayappa Chettiar

Respondent : Alagappa Chettiar

Judgement :

ORDER

Somayya, J.

1. The Public Prosecutor showed me a copy of the Amiu's return on the warrant which was issued for the arrest of accused 2. The return mentions that the Amin was informed that accused 2 had gone to Epoh. Epoh is in the Federated Malay States and according to the affidavit filed on behalf of the petitioner he left India in March and that is not contradicted by the complainant in the affidavit which he has filed to-day before me. What is said is that he originally preferred a complaint on 1st February 1941, that the Magistrate forwarded the same to the police for enquiry, that the Court took it on file ultimately and that in the month of April, the complainant got information from the Magistrate that he had already issued notice to the accused on the police report. The complainant states further that on one day which is said by the petitioner's advocate to be 31st May 1941, the complaint was dismissed on the ground that the complainant was absent when called. A fresh complaint was filed on 2nd June 1941 and it is on this fresh complaint that the warrants of attachment and proclamation were issued on 20th June 1941. It is obvious that when the Magistrate was informed that the petitioner had already left India the orders for attachment and proclamation are without jurisdiction, unless he was satisfied that the accused was wilfully absconding, knowing of the warrant. He could not have known of the warrant which was issued after he had left India. When it was clear that the accused had left India in March, it could not possibly be said that he absconded or that he is concealing himself so that the warrant cannot be executed, which is a condition precedent under Section 87, Criminal P.C., for the issue of a proclamation. It is also a condition precedent for the issue of attachment under Section 88. It was at first said that the petitioner was still in India and that he is concealing himself somewhere in India. If this is so, the action of the Magistrate would be perfectly justified. I asked the complainant whether he would state so in an affidavit and I gave him an opportunity of stating it in an affidavit. In the affidavit filed by him he has not contradicted the statement made on behalf of the petitioner that he left India in March. Under these circumstances, I hold that the orders of proclamation and attachment are without jurisdiction and as such they are set aside.

