

the question whether the facts brought the case within Section 210 of the Indian Penal Code.

The order of the Joint Magistrate acquitting the accused is accordingly set aside, and the Joint Magistrate is directed to restore case to be filed and to proceed to dispose of the complaint according to law.

**NOTES.**

[see (1886) 10 Bom. 288.]

[4 Mad. 327]

APPELLATE CRIMINAL.

*The 5th December, 1881.*

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE  
MUTTUSAMI AYYAR.

*The Queen against Adapa Venkanna.\**

*Criminal Procedure Code, Section 45.*

Pending inquiry into a charge of house-breaking, the Second-Class Magistrate of B Division was transferred to A Division. The case was transferred to his file by the District Magistrate. In the course of inquiry it appeared to the Second-Class Magistrate that the offence committed was robbery and therefore not triable by him. Proceedings were accordingly stayed and the case submitted to the Magistrate of the Division.

The Magistrate of the Division, considering he had no jurisdiction as the offence was not committed in his Division, forwarded the case to the Magistrate of the District.

The Magistrate of the District ordered that an inquiry should be held, and that the case should be committed to the Sessions by the Second-class Magistrate if there was sufficient evidence.

The Second-class Magistrate accordingly committed the case to the Sessions.

*Held* that the order of the District Magistrate was illegal.

THIS was a case referred for the orders of the High Court by the Sessions Judge of Vizagapatam under Section 296 of the Code of Criminal Procedure on the ground that the order of commitment was illegal.

The facts are set out in the Judgment of the Court (TURNER, C.J., and MUTTUSAMI AYYAR, J.)

Counsel were not instructed.

**Judgment:**—The Police, it appears, charged the prisoner before the Second-class Magistrate of Bimlipatam who, during the trial, [328] was transferred to Anakapalle whereon the District Magistrate transferred the case to the file of the Second-class Magistrate of Anakapalle.

Subsequently the Second-class Magistrate found the offence was robbery which he was not competent to try and stayed proceedings and submitted the case to his Divisional Magistrate, the Principal Assistant Magistrate, who, considering that he had no jurisdiction as the offence was committed in Bimlipatam, without his Division, sent it on to the District Magistrate.

The District Magistrate directed the Second-class Magistrate to hold an inquiry and to commit to the Court of Session if the offence was found proved.

\* Revision Case No. 91 of 1881 referred by A. L. Lister, Acting Sessions Judge of Vizagapatam.

Thereon the Second-class Magistrate of Anakapalle committed the accused to the Sessions Court.

The Sessions Judge submits that when proceedings had been stayed by the Second-class Magistrate under Section 45, that Magistrate was not empowered to commit the accused to the Court of Session.

The validity of the commitment depends on two considerations, *viz.*, whether an opinion formed by a Subordinate Magistrate and an order made thereupon is liable to be set aside by the District Magistrate, and whether the Magistrate in charge of a Division acquires jurisdiction under Section 45 over cases which he is not ordinarily competent to entertain by virtue of the order of reference made by the District Magistrate to a Subordinate Magistrate in his Division.

Inasmuch as the case had been referred to the Taluk Magistrate by the Magistrate of the District, the Taluk Magistrate when he found he had no jurisdiction to try it, should have represented the matter to the Magistrate of the district and submitted it either to the Magistrate of the District, or to such other Magistrate *having jurisdiction* as the Magistrate of the District directed. It does not appear the Divisional Magistrate had jurisdiction.

The order of the Magistrate of the District directing a commitment is not warranted by law. We set it aside and direct that the case be tried by the Magistrate of the Division in which it arose if he has first-class powers; if he has not, then by the Magistrate of the District.

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[329] APPELLATE CRIMINAL.

*The 6th December, 1881.*

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, MR. JUSTICE INNES,  
AND MR. JUSTICE KINDERSLEY.

*The Queen against Parasurama Naikar.*"

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*Criminal Procedure Code, Sections 215, 362—Discharge without examination of all witnesses for prosecution illegal.*

Section 362† of the Code of Criminal Procedure does not give a Magistrate discretion to dispense with the examination of witnesses summoned by the prosecution.

An order of discharge under Section 215 of the Code of Criminal Procedure before all the witnesses for the prosecution have been examined is illegal.

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\* Revision Case No. 141 of 1881 in the matter of the proceedings of F. H. Hamnett, Acting Head Assistant Magistrate of South Arcot, dated 8th October 1881.

† [Sec. 362 :—In warrant cases, the Magistrate shall ascertain from the complainant, or otherwise, the names of any persons who may be acquainted with the facts and circumstances of the case, and who are likely to give evidence for the prosecution, and shall summon such of them to give evidence before him as he thinks necessary.

The Magistrate shall also, subject to the provisions of section three hundred and fifty-nine, summon any witness and examine any evidence that may be offered in behalf of the accused person to answer or disprove the evidence against him, and may for that purpose, at his discretion, adjourn the trial from time to time. If the Magistrate refuse to summon a witness named by the accused person, he shall record his reasons for such refusal, and the accused person shall be entitled to appeal to the Court of Session against such refusal.]