

[4 Mad. 325]

APPELLATE CRIMINAL.

The 5th December, 1881.

PRESENT :

MR. JUSTICE KERNAN, AND MR. JUSTICE MUTTUSAMI AYYAR.

*The Queen against Mutturaman Chetti.***Fraudulent execution of decree—Civil Procedure Code, Sections 643, 258
—Procedure—Evidence.*

Where the provisions of Section 258 of the Code of Civil Procedure have not been complied with, a Civil Court is not debarred from admitting evidence that the decree has been satisfied out of Court, for the purpose of an investigation with a view to sending the judgment-creditor to a Magistrate under Section 643 of the Code of Civil Procedure,

[326] IN this case the accused was sent up to the Joint Magistrate of Madura under Section 643 of the Code of Civil Procedure by the District Munsif of Kodaikanal for having taken out a warrant in execution of a decree which had already been satisfied out of Court. A receipt was produced before and admitted by the District Munsif purporting to be an acknowledgment by the accused of payment of the decree amount.

The Joint Magistrate, having charged the accused, discovered that the provisions of Section 258 of the Code of Civil Procedure had not been followed (the payment not having been certified to the Court), found the accused not guilty under Section 210 of the Indian Penal Code, and discharged him under Section 220 of the Code of Criminal Procedure, holding that the Munsif acted without jurisdiction in admitting the receipt and in forwarding the accused in custody on the presumption arising from the production of the receipt.

The records of the case having been called for by the High Court on October 24th, the following **Judgments** were delivered by the Court (KERNAN and MUTTUSAMI AYYAR, JJ.):—

Muttusami Ayyar, J.—I think that the order made by the Acting Joint Magistrate discharging the accused is illegal. The District Munsif of Kodaikanal sent this case to the Joint Magistrate for investigation under Section 633 of Act X of 1877. Non-compliance with the provisions of Section 258 does not, in my judgment, render the commitment illegal. Nor was it competent to the District Munsif to make an order under Section 258, the complaint being made by the judgment-debtor on the 6th September, while the payment on account of the decree under execution was made on the 9th March last. An application for the issue of a notice under Section 258 to show cause why the payment should be recorded as certified should have been made within 20 days from the date of the payment under Act XV of 1877, 2nd schedule, 3rd division, Art. 161. I would set aside the order of the Joint Magistrate and direct him to replace the case on his file and deal with it in accordance with law.

Kernan, J.—I agree. Payment in full of the decree was made, and the plaintiff, nevertheless, caused the decree to be executed by arrest of the defendant.

[327] Though the Judge could not recognize the payment, so as to rule that the execution was illegal, yet he was not prevented from investigating into

* Revision Case No. 135 of 1881 against the proceedings of C. Kough, Acting Joint Magistrate of Madura, dated 5th October 1881.

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.]

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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.