

APPELLATE CRIMINAL.

Before Mr. Justice Kernan* and Mr. Justice Muttusámi Ayyar.

QUEEN-EMPRESS

against

VÍRANNA.*

1886.
April 20.

Criminal Procedure Code, s. 349.

A Second-class Magistrate having convicted a person of theft and sent him to a First-class Magistrate for enhanced punishment as an old offender under s. 349 of the Code of Criminal Procedure, the First-class Magistrate returned the prisoner to the Second-class Magistrate and directed that officer to commit the case to sessions.

On a reference by the Sessions Judge, the High Court, while allowing the committal to stand, directed that in all cases referred under s. 349 of the Code of Criminal Procedure, the Court to which the case is referred should dispose of the case itself and not send it back to the Court by which the reference is made for committal to sessions.

CASE referred to the High Court by A. L. Lister, Sessions Judge of Godávári, on 30th March 1886.

The material portion of the letter of reference was as follows :—

“The accused was placed before the Sub-Magistrate of Rajahmandri on a charge of theft in a building and convicted, and, as he was an old offender, the proceedings were submitted to the Joint Magistrate under s. 349 of the Code of Criminal Procedure.

The Joint Magistrate by proceedings, No. 16 of the 10th March, referred the case back again to the same Sub-Magistrate with a direction that he should commit the case to the Sessions Court, and in obedience to that order, the Sub-Magistrate committed the case.

I submit that the order of the Joint Magistrate directing another Magistrate to commit is not according to law, and is *ultra vires*; in Criminal Revision Case 501 of 1882 it was held that such an order is *ultra vires*, and the commitment was quashed.”

Counsel were not instructed.

The Court (Kernan and Muttusámi Ayyar, JJ.) delivered the following

* Criminal Revision Case 195 of 1886.

QUEEN-
EMPRESS
v.
VIRANNA.

JUDGMENT :—It has been many times ruled by this Court that a Magistrate, to whom proceedings are submitted under s. 349 of the Code of Criminal Procedure, is not at liberty to return the case to the submitting Magistrate, but must dispose of it himself. He has the power to commit to sessions if necessary.

Very serious inconvenience is the result of the Magistrate's order returning the prisoner and directing committal to sessions.

We think that we may allow the committal to the sessions to stand.

We desire, however, that in all cases referred under s. 349, the Magistrate, to whom reference is made, shall himself dispose of the case and shall not return it and the prisoner to the Magistrate by whom the reference is made.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Kernan, Mr. Justice Muttusámi Ayyar, Mr. Justice Brandt, and Mr. Justice Parker.

1886.
March 9.
April 21.

KALANDAN (PETITIONER)
and
PAKRICHI (RESPONDENT).*

THAMMAYYA (PLAINTIFF)
and
VENKANNA (DEFENDANT).†

Regulation IV of 1816, s. 30—Personal property only liable to attachment in execution of Village Múnsif's decree.

Under Regulation IV of 1816 the decrees of Village Múnsifs cannot be executed against other than personal property. Such decrees can be executed by a transferee of the decree and against the representative of a deceased judgment-debtor.

THESE cases were heard together. The facts in *Kalandan v. Pakrichi* were as follows :—

One Mayan having obtained a decree for Rs. 19-5-10 against the assets of Keloth Kunhi Paki, deceased, in suit 237 of 1885 on the file of the Village Múnsif of Tellicherry Amsham on 27th April 1885, the Village Múnsif, on the 25th June, attached a valuable house in Tellicherry in execution of this decree. On

* Civil Revision Petition 288 of 1885.

† Civil Revision Petition 307 of 1885.