

AMMA
v.
KUNHUNNI.

The facts appear from the judgment of the Court (Kernan and Muttusámi Ayyar, JJ.)

Sankara Menon for appellant.

Sankara Náyar for respondent.

JUDGMENT:—The Court of first instance tried all the issues, that is, the Múnsif took evidence on them all. But the Múnsif thought that his finding on the third issue would render unnecessary any finding on the other issues.

On appeal the District Judge reversed the finding on the third issue and ordered the case to be remanded for trial by the Court of first instance of the issues untried.

This order was supposed to be justified by s. 562 of the Code of Civil Procedure, but it was not legally justifiable under that section. That section provides that if a Lower Court has disposed of the suit on a preliminary point so as to exclude evidence of fact which appears to the Appellate Court essential to the determination of the case, and if the decision on that preliminary point is reversed on appeal, then the Appellate Court may *remand*. But in this case no evidence appears to have been excluded, as evidence was given on the issue which the Judge has directed to be tried. The Judge should have acted either on s. 565 or 566.

We set aside the order of the District Judge and direct him to restore the case to his file and proceed according to law.

Costs of this appeal to be provided for in the decree.

APPELLATE CRIMINAL.

Before Mr. Justice Kernan and Mr. Justice Parker.

SCOTT against RICKETTS.*

1886.
April 9.

Criminal Procedure Code, s. 526—District Magistrate and Civil and Sessions Judge (qui Magistrate) of Bangalore subordinate to High Court.

The District Magistrate and the Civil and Sessions Judge of the civil and military station at Bangalore are Magistrates subordinate to the High Court at Madras within the meaning of s. 506 of the Code of Criminal Procedure.

In petition No. 19 of 1886 James Scott prayed that the High Court would withdraw case No. 97 of 1886 on the file of the District

* Criminal Miscellaneous Petitions 19 and 23 of 1886.

Magistrate of Bangalore, as well as case No. 1 of 1886 on the file of the Civil and Sessions Judge of Bangalore, and try them, or transfer them for trial to a Presidency Magistrate of Madras, or transfer the former case to the file of the Civil and Sessions Judge of Bangalore.

SCOTT
v.
RICKETTS.

In petition No. 23 of 1886 Lancelot Ricketts prayed that case No. 1 of 1886 on the file of the Civil and Sessions Judge of Bangalore might be transferred to the file of the District Magistrate of the said station to be tried with case No. 97 of 1886 on the file of that Magistrate.

Mr. *Branson* and Mr. *Grant* for Scott.

Mr. *Shaw* for Ricketts.

JUDGMENT :—We think we have jurisdiction to transfer these cases, as the Courts of both Magistrates are as Courts of Magistrates of the First Class subordinate to this Court within the meaning of s. 526 of the Code of Criminal Procedure.

We think that, under the circumstances stated in the affidavits on both sides, it is necessary for the ends of justice to transfer these two cases from the Courts of Colonel Hill and Major Maltby, respectively, to be heard and inquired into by another competent Magistrate. The cases are case and cross-case, and it will conduce to convenience that they should be heard by the same Magistrate. There is no other Magistrate at Bangalore to whom the cases can be transferred. Mr. Scott states he intends to summon Major Maltby as a witness, and that he and Mr. Ricketts are very intimate friends. We do not say that Major Maltby would be influenced in his decision by that fact, but we think we are justified in removing the case under the circumstances from his Court.

As to Colonel Hill's jurisdiction, counsel for Mr. Ricketts contends that no offence was committed outside the civil and military station, and that Colonel Hill has no jurisdiction to try either case. We should then either allow the two cases to proceed in separate Courts, or remove the cases to be inquired into by a Magistrate in Madras.

We think the latter is the course we ought to pursue, although some inconvenience may follow.

We order accordingly both cases be transferred to the file of Colonel Smith, the Chief Presidency Magistrate of Madras.

Solicitors for Ricketts *Barclay & Morgan*.