

## APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Muttasami Ayyar.*

QUEEN-EMPRESS

*v.*

MAHANT OF TIRUPATI.\*

*Criminal Procedure Code, s. 96—Search warrant—When a search  
warrant may issue.*

The accused was charged with the offence of criminal misappropriation of treasure belonging to a temple of which he was alleged to be the trustee. From the complaint, it appeared that some of the treasure belonging to the temple had been buried under a flagstaff in the temple, and the Magistrate was of opinion that the nature of the property so buried had an important and material bearing on the case for the prosecution :

*Held*, the Magistrate had jurisdiction to issue a warrant to search for and produce such property upon information which he considered credible, since there was a complaint before him duly affirmed as prescribed by the Criminal Procedure Code ; and that it was not incumbent on him to wait until the evidence for the prosecution should have been recorded in the presence of the accused.

PETITION under sections 435 and 439 of the Criminal Procedure Code praying the High Court to revise the order made by O. V. Bosanquet, Head Assistant Magistrate of North Arcot, on the 10th August 1889, on the application of the complainant, directing the issue of a summons to the accused for the production before the Court on the 19th August 1889 of the property buried underneath the dwajastambham pillar of the temple at Upper Tirupati.

Mr. Nelson, Mr. Norton, Ananda Charu and Ramuchandra Rau for petitioner.

S. Subramanya Ayyar and P. Subramanya Ayyar for counter-petitioner.

The facts of the case and the arguments adduced on this petition appear sufficiently for the purpose of this report from the judgment of the Court.

JUDGMENT.—This is an application for the revision of an order made by the Head Assistant Magistrate of the district of

\* Criminal Revision Case No. 360 of 1889.

North Arcot on the 10th instant. The order was to the effect that a summons do issue to the mahant (petitioner before us) "to cause to be produced before this Court (the Court of the Head Assistant Magistrate) on Tirumalay on Monday, the 19th August, the property buried underneath the dwajastambham pillar."

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The circumstances under which the order was made are shortly these. In the year 1872, a gold treasure, consisting of ancient gold coins of the estimated value of one lakh and seventy thousand rupees, was found buried in a place inside the temple on the hill at Tirupati called the Homa Kundam. This treasure was taken to the District Court at Chittoor and returned to the then trustee of the temple under the orders of that Court. It since remained in the possession of the petitioner's predecessor until his death in August 1880, and then passed into the possession of the petitioner, the present mahant or trustee. In 1887 the flagstaff (dwajastambham) in the temple was renewed, the old dwajastambham being taken down and new one being put up in its place. On the 20th July last, Srirangachari, one of the seven Acharya Purushas and holders of other mirassi rights in the temple, preferred a complaint to the District Magistrate of North Arcot accusing the petitioner, the present mahant or trustee, of criminal misappropriation in respect of a portion of the gold treasure. The statement taken from him on solemn affirmation tended to show that the petitioner made it to appear that the gold treasure which remained in his custody as trustee of the temple was deposited beneath the new flagstaff or dwajastambham, which was put up in 1887, whereas he deposited under it only a small portion of it and dishonestly misappropriated the remainder. Certain affidavits were filed before the District Magistrate and the complaint was transferred by him to the Head Assistant Magistrate on the 24th July last.

Before issuing process the Head Assistant Magistrate held an inquiry and made the order now sought to be revised in the course of that inquiry.

It appears from the order recorded by the Magistrate that he considered upon the affidavits and other information before him that a warrant should issue for the search and production of the property actually deposited under the flagstaff, that the petitioner's counsel then undertook that if a summons was issued under section 94 of the Criminal Procedure Code the mahant

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would have the necessary operations conducted in the presence of a responsible officer and would give notice of the day on which he intended to begin operations, and that on this understanding the Magistrate ordered that summons be issued instead of a search warrant. It is admitted that this was so, and stated that the undertaking was given without prejudice to the petitioner's right to apply to this Court for the revision of the Magistrate's order.

It is also conceded that, in dealing with this petition, we must take the real question to be, whether, upon the information before him, the Head Assistant Magistrate might lawfully issue a search warrant. It is urged, first, that no search warrant should be issued until the evidence for the prosecution was recorded in the presence of the petitioner and tested by cross-examination and a *prima facie* case was thereby established against him; secondly, that by excavating for the property deposited under the flagstaff, the flagstaff would be desecrated and that such desecration would be repugnant to the religious feelings of the general body of worshippers interested in the temple; and, thirdly, that there are physical difficulties in excavating for the property lying under the *dhwajastambham*.

As to the first contention, we are of opinion that, under the provisions of section 96 of the Code of Criminal Procedure, it is lawful for a Magistrate to issue a warrant for the search and production of anything before him when he considers that such production is necessary for the purposes of any investigation or inquiry under the Code. Nor is it obligatory upon him to wait until a preliminary inquiry is held and all the witnesses for the prosecution are examined and cross-examined. Such a restriction would often tend to defeat the object with which search warrants are authorized to be issued. The Magistrate is entitled, in our judgment, to act upon information which he considers credible, provided that there is a complaint before him and the complainant is examined by him on solemn affirmation in the manner prescribed by the Code of Criminal Procedure. On referring to the complaint, to the complainant's examination and to the affidavits on the record, we see no reason to doubt that there was a reasonable foundation laid in this case for the issue of a search warrant. We do not desire to express any opinion at this stage of the case as to the weight which may be due to the statements contained in the several affidavits. But we may say that upon the affidavit of

Kusal Doss and the letter produced by him and upon affidavits on the record relating to the contents of the mahazarnama prepared for the petitioner when the new dwajastambham was put up and to subsequent dealings in gold, to attempts to sell gold, and to sales of gold by the petitioner in Bombay, Bangalore and Madras, there was sufficient information before the Magistrate upon which he might issue a search warrant. It is then argued that even if the gold treasure were not found under the flagstaff, it would not follow that the petitioner is guilty of criminal misappropriation. But we consider it sufficient to observe that the nature of the property actually deposited under the flagstaff has an important and material bearing upon the accusation against the petitioner. The weight due to the statements of several persons who made affidavits is a matter which it is ordinarily for the Magistrate to determine, and unless the proceeding is either illegal or vitiated by material irregularity, we do not think we ought to interfere on revision and prevent the collection of material evidence as well in the interests of the temple as in the interests of justice.

[Their Lordships next proceeded to consider the other contentions in order, and having held them to be groundless, they dismissed the petition.]

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## APPELLATE CRIMINAL.

*Before Mr. Justice Parker and Mr. Justice Wilkinson.*

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v.

SHEREGAR.\*

1889.  
May 1.

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*Forest Act—Act V of 1882 (Madras), s. 26—Canara Forest Rules, Nos. 7, 12, 23.*

The accused, not having a permit, cut certain classified trees on the *kumaki* adjoining his land and used the wood in his still as fuel; and upon these facts he was convicted of an offence against rules 7, 12 and 23.

*Held*, that the conviction was illegal.

CASE reported for the orders of the High Court under s. 438 of the Code of Criminal Procedure by S. H. Wynne, Acting District Magistrate of South Canara.

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\* Criminal Revision Case No. 73 of 1889.