PULAMADA v. RAVUTHU. the Subordinate Judge in this respect and confirm it in other respects. As both parties have succeeded and failed in part we direct that each bear their costs in this Court.

APPELLATE CRIMINAL.

Before Mr. Justice Kernan and Mr. Justice Brandt.

1887. Aug. 23.

QUEEN-EMPRESS

against

ENGADU AND OTHERS.*

Criminal Procedure Code, ss. 61, 167, 170, 344—*Remand of prisoners in custody of the police.*

The right construction of s. 167 of the Code of Criminal Procedure is that in proceedings before the police under chapter XIV, the period of remand cannot exceed in all fifteen days, including one or more remands.

CASE reported for the orders of the High Court under s. 438 of the Code of Criminal Procedure by G. Stokes, Acting District Magistrate of Cuddapah.

The case was reported as follows :—

"These are dacoity cases. The prisoners were remanded for fifteen days under s. 167 of the Code of Criminal Procedure. The police applied for a remand for the collection of further evidence for a further period, but the Sub-Magistrate refused to grant any further remand on the authority of the ruling of the High Court, communicated with G.O., No. 3092, dated 22nd November 1883, and directed the prisoners to be released. As the ruling in question seems to me to be highly dangerous to the administration of public justice and unnecessary, and as, with all deference, I think it founded on a mistaken view of the law, I make this reference.

"These three dacoities were committed, the first at Kallur in Chandragiry taluk, North Arcot district, the second in the limits of Srirangarajapaliem village, Pullampet taluk, *i.e.*, on the road from Rajempet to Rayachoti, and third at Ghatlu in Madanapalle taluk, Cuddapah district. The distance of the scene of offence in the first case from that in the second I am unable to state, but it can

* Criminal Revision Case, No. 289 of 1887.

hardly be less than three days' journey at the shortest by road and rail. The distance of that of the second from that of the third is seventy miles by road. In the first case, the persons attacked were inhabitants of Kurnool, journeying to Madras. In the second, coral merchants of the Vayalpad taluk, whose houses are as far from the scene of crime as Ghatlu. In the third they were inhabitants of Madanapalle, which is close to Ghatlu.

"The above cases came to light by some of the stolen property being found in the possession of the accused. The prisoners were arrested with property in Kadiri taluk at a place, I believe, about fifty miles from Ghatlu. The result of the ruling to which I call attention would be that the police had to get the owner of property and have it identified, had to collect all the evidence as to the commission of the offence and identity of prisoners, and to work up the case within fifteen days; but in the above cases it is at once obvious that this is quite impossible, and any one at all conversant with the detection of dacoity cases will know, that, unless it is a very unskilfully-contrived crime, it is impossible to get the evidence together much under one-and-a-half months; yet until the evidence is got together no charge sheet can be put in under the Criminal Procedure Code, and, consequently, there is no Magistrate having jurisdiction in the case who can remand for more than fifteen days. The prisoners arrested must be released with the certainty that they will not for years if ever be caught again.

"The remarks which I have now to make I desire to make with all respect to the learned Judge, who made the ruling. In my opinion, the ruling is clearly wrong. It proceeds on the contrast between the ss. 167 and 344 of the Code of Criminal Procedure. I would submit, with all deference, that the words 'from time to time for a period not exceeding fifteen days' mean exactly the same as the words 'for a term not exceeding fifteen days at a time.' That they were intended to do so I entertain no doubt, for let us consider the old law, the evil, and the remedy. The section corresponding to 167 of the former Criminal Procedure Code contained no mention of a time to which the remand was limited. The result was that a Magistrate in Bombay held that he could remand for an indefinite period. The High Court ruled on revision in *Reg.* v. *Surkyávalad Dháku* (1) that remand in this case

(1) 5 Bom. H.C., Cr. C., 31.

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was governed by the same rule as contained in the section corresponding to s. 344 of the present Criminal Procedure Code. I submit that by the true rules of interpretation of statutes on this state of facts, the proper interpretation is that the legislature intended in adding to s. 167 of the Code of Criminal Procedure not to change but to clear the law.

"This view is, I would respectfully submit, borne out by the discussion which preceded the passing of the Code of Criminal Procedure. It will be observed that in the bill, as originally drafted, the words used were 'for a term not exceeding fifteen days in the whole.' The words 'in the whole' were struck out by the select committee, and it was stated in their report the section had been altered so as to leave the existing law intact."

Prisoners were not represented.

The Acting Government Pleader (Mr. *Powell*) for the Crown.

The further facts and arguments in this case appear sufficiently, for the purpose of this report, from the judgments of the Court (Kernan and Brandt, JJ.).

KERNAN, J.—The ruling of the 23rd October 1883 pronounced by a Judge sitting in the Admission Court was as follows:—"The referring officer is right. The construction of s. 167 is that in proceedings before the police under chap. XIV, the period of remand cannot exceed in all fifteen days, including one or more remands.

"In proceedings under chap. XXIV, s 344, much larger power of remand is given, not exceeding fifteen days *at a time*.

"The contrast between the sections is very clear."

The Third-class Magistrate, on the 2nd and 6th December 1886, in two cases having recorded that the fifteen days' remand against the prisoners expired that day, and that he was not authorized to grant remand for a time exceeding fifteen days under s. 167, directed the prisoners to be set at liberty.

The Acting District Magistrate refers the case to have the above ruling considered on the ground that s. 167 authorizes the Magistrate to remand from time to time for a term not exceeding fifteen days *at a time*.

We think the ruling of 1883 is right. The Magistrate might from time to time remand, but the sum of the periods of remand cannot exceed "a term of fifteen days." The words "at a time" do not occur in s. 167 after "fifteen days." Where it was intended by

the Code that remand might be made for fifteen days "at a time," the Code expressly says so (see s. 344 in the second paragraph or proviso). The power of remand under s. 167 is given to detain the prisoners in custody while the police make the investigation, and in a proper case to prepare to commence the inquiry. Section 167 gives the Magistrate discretion (recording his reasons) to remand from time to time, but limits the period for the exercise of that discretion to fifteen days. During the period of investigation by the police, evidence usually is not brought before the Magistrate, as the inquiry has not been begun. If the construction of s. 167 is as contended for by the Magistrate, the prisoner might find himself in custody for months before any witness is confronted with him, or any evidence recorded by the Magistrate. Such construction would cause great grievance and would then be wholly unnecessary, for s. 170 authorizes the police officer, if there is evidence or reasonable ground of suspicion, to forward the accused to a Magistrate empowered to take cognizance of an offence on police report. Then, under s. 344, an application might be made for cause shown as specified there to the proper Magistrate to postpone the commencement of the inquiry and remand the prisoner.

Section 344 requires cause for the remand to be shown, whereas s. 167 gives a discretion to the Magistrate, merely directing him to record his reason and give notice to the District Magistrate. Apparently, the police officer thought there were good grounds for the charge, but he asked five days' remand to charge-sheet witnesses.

The prisoner was not forwarded under s. 170. The Third-class Magistrate, apparently, was not authorized to act on a police report, and was not authorized to make an order under s. 344. At all events, the application for remand was under s. 167 and not under s. 344. We do not agree with the Magistrate and we make no order.

BRANDT, J.—Under an order made under s. 167, Criminal Procedure Code, the accused person is detained in the custody of the police, or in such other custody as the Magistrate making the order thinks fit. Ordinarily, no doubt, he will be in the custody of the police.

Such detention is altogether different from the custody in which an accused person is kept under remand given under s. 344,

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Criminal Procedure Code, which is the custody provided by the legislature for under-trial prisoners.

In the former case, the accused is not placed before a Magistrate for trial or for the purpose of an inquiry by a Magistrate with a view to commitment, but to enable the police to complete, if possible, or, at least, to proceed with, their investigation.

The intention of the legislature—having regard to ss. 61 and 167 and to the requirements of justice generally—is that an accused person should be brought before a Magistrate competent to try or commit with as little delay as possible—*Mánikam* v. *The Queen*(1). There may be cases in which no evidence may be available within sixteen days from the date of an accused person's arrest, but such should be and probably are rare, and such evidence as may then be available should be placed before a Magistrate competent to hold an inquiry or try. The Magistrate has then power under s. 344, Criminal Procedure Code, to postpone without limit, (provided that the accused be not remanded for more than fifteen days at a time), the commencement of the inquiry or trial for the purpose of obtaining further evidence which it appears likely may be obtained if time is given, or for other reasonable cause, and if no such evidence is then forthcoming and if it is not shown that any is likely to be obtained, it appears only reasonable that the accused person should no longer be detained in custody; there is nothing to prevent his being re-arrested, if evidence be subsequently secured.

Reading the two ss. 167 and 344 together and having regard to the other considerations above stated, I concur in the opinion of my learned colleague.

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(1) I.L.R., 6 Mad., 63.