

RAMANADHAN  
ZAMINDAR OF  
RAMNAD.

bought to be awarded for prospective injury can be measured, the rent payable to the zamindar depending on a number of circumstances which it is not possible to foresee. We may also observe that by the appellant altering cultivation lands into a pleasure house, the zamindar is placed in a position worse than that which he would otherwise occupy as regards the several rights created in his favour by Act VIII of 1865. We are not, therefore, prepared to accede to this contention.

As regards the particular land in dispute the admission that appellant is a tenant with occupancy right is now made without any reservation, although the District Munsif refers to a reservation in paragraph 15 of his judgment.

The decision of the Courts below is correct and we dismiss this second appeal with costs.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.*

QUEEN-EMPRESS

*v.*

MUTHIA.\*

1892.  
May 6.  
July 14.

*Criminal Procedure Code—Act X of 1882, ss. 15, 16—Bench of Magistrates—Constitution of the bench under the rules of the Government of Madras.*

The accused was tried on a charge under Indian Penal Code, s. 352, by a bench of Magistrates, consisting of a pensioned District Munsif who had been appointed Chairman of the bench and one Special Magistrate. The Magistrates differed in opinion, but the Chairman gave his casting vote for conviction, and the accused was convicted and sentenced :

*Held*, that the Court was not legally constituted under the rules of the Government of Madras, and the conviction should be set aside.

CASE stated for the orders of the High Court under Criminal Procedure Code, s. 438, by T. Weir, Sessions Judge of Madura.

The case was stated as follows :

“The bench consisted of two Special Magistrates. One of them is a pensioned District Munsif, that is a Magistrate of experience, and had been duly constituted Chairman under the

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\* Criminal Revision Case No. 133 of 1892.

“ notification of Government, dated 30th July 1890, which autho-  
 “ rizes the Dindigul bench to try summarily certain offences  
 “ under the Indian Penal Code, of which an offence under section  
 “ 352 is one.

“ The Joint Magistrate reversed the conviction on the ground  
 “ that the bench of two differed in their opinion, and that the Court  
 “ was not properly constituted and the presiding Magistrate should  
 “ not have availed himself of the casting vote in a Court of two.

“ I am of opinion that the Joint Magistrate has erred in  
 “ reversing the conviction.

“ Section 15 of the Criminal Procedure Code authorizes the  
 “ constitution of a bench of two Magistrates, and the rules framed  
 “ by Government for the guidance of benches of Magistrates  
 “ under the provisions of section 16 of the code, as embodied in  
 “ the latest Government order on the subject, viz., G.O., dated  
 “ 27th August 1891, No. 1713, Judicial, clearly give the Chair-  
 “ man of the bench a casting vote in cases of difference of opinion  
 “ arising between the members of the bench.

“ The Joint Magistrate has himself since admitted, in reply  
 “ to the query from this Court, that ‘ he was not aware that the  
 “ ‘ Chairman in a bench of two Magistrates thus constituted could  
 “ ‘ use his casting vote and pass a judgment against the opinion  
 “ ‘ of the other Magistrate.’

“ In the circumstances stated the reversal by the Joint Magis-  
 “ trate of the conviction by the Dindigul bench, which had been  
 “ legally constituted and duly empowered as aforesaid, was clearly  
 “ erroneous.”

Counsel were not instructed.

JUDGMENT.—By section 15 of the Code of Criminal Procedure  
 the Local Government is empowered to “ direct any two or more  
 “ Magistrates in any place outside the presidency towns to sit  
 “ together on a bench ” and to “ invest such bench with any of the  
 “ powers conferred or conferrable by or under this code on a  
 “ Magistrate of the first, second or third class, and direct it to  
 “ exercise such powers in such cases or such classes of cases only  
 “ and within such local limits as the Local Government thinks fit.”

Under section 16 of the same Code “ the Local Government  
 “ may, or, subject to the control of the Local Government, the  
 “ District Magistrate may, from time to time, make rules consistent

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“with this code for the guidance of Magistrates’ benches in any district respecting the following subjects :

“ (a) The classes of cases to be tried.

“ (b) The times and places of sitting.

“ (c) The constitution of the bench for conducting trials.

“ (d) The mode of settling differences of opinion which may arise between the Magistrates in session.”

On the 5th April 1889, the Local Government adopted the following (among other) rules on the subject :

“One or more Special Magistrates appointed for any local area may sit as a bench, together with any salaried Magistrate whom the District Magistrate shall, from time to time, nominate for that purpose. The salaried Magistrate shall be the Chairman of the bench so constituted and the bench is hereby invested with the powers of a Magistrate of the third class (i) to try summarily offences against the Indian Penal Code, ss. 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, and 352 ; (ii) to try summarily offences against Municipal Acts and the conservancy clauses of Police Acts, punishable only with fine or with imprisonment for a term not exceeding one month ; (iii) to try, in accordance with chapter XX of the Code of Criminal Procedure, other offences against section 48 of the Police Act XXIV of 1859, provided that, with the approval of the District Magistrate, any two or more Special Magistrates, of whom one is a pensioned Magistrate of experience, may sit together as a bench and exercise the powers of a Magistrate of the third class in respect of the offences specified in clauses (2) and (3) above. The pensioned Magistrate shall, if no salaried Magistrate is present, be Chairman of such bench.”

Paragraph 2 has reference to the “times and places of sitting” and paragraph 3 directs that differences of opinion “shall be settled by the votes of the majority of the Magistrates present, the Chairman having the casting vote.”

On the 18th July 1889 the above rules were altered by substituting the words “any three or more” for the words “any two or more” in the proviso to paragraph 1, and by adding the words “or specially designated by the District Magistrate” after the words “pensioned Magistrate of experience” in the same proviso ; and by further adding to the proviso the following words “and

“with the sanction of Government in respect of the offences specified in clause (1).”

The proviso thus altered is as follows :

Provided that, with the approval of the District Magistrate, any three or more Special Magistrates, of whom one is a pensioned Magistrate of experience or specially designated by the District Magistrate, may sit together as a bench and shall exercise the powers of a Magistrate of the third class in respect of the offences specified in clauses (2) and (3) above and with the sanction of Government in respect of the offences specified in clause (1).

The second clause of the proviso was also altered at the same time by the addition of the words “or persons specially designated as aforesaid” and consequently became as follows: “the pensioned Magistrate or person specially designated as aforesaid shall, if no salaried Magistrate is present, be Chairman of such bench.”

Clause (3) of paragraph 1 was cancelled and the alteration thereby necessitated in the proviso also made by notification, dated 7th November 1889. As, however, the present reference is no way affected by clause (3), it is not necessary to notice that alteration further than to observe that even that clause has been subsequently restored and the present rules as embodied in Government Order, dated 27th August 1891, are identical in every respect with the rules on the subject as they stood as altered by Government Order, dated 18th July 1889.

The only other Government Order requiring notice for the purpose of the present case is that dated 30th July 1890, by which the benches of Magistrates at Madura and Dindigul were empowered to exercise the powers of a Magistrate of the third class in respect of the offences specified in clause (1), paragraph 1 of the rules mentioned above, Saiyed Mustapa Saheb being appointed at the same time President of the bench at Dindigul when exercising the power thus conferred upon it.

The accused in the present case was tried by a bench consisting of the said Saiyed Mustapa Saheb and another Special Magistrate for an offence punishable under section 352 of the Penal Code. The two Magistrates differed as to the guilt of the accused, Mr. Saiyed Mustapa being of opinion that the accused was guilty, while the other Magistrate thought him not guilty. He was, however, convicted by the Chairman, availing himself of his right to a casting vote, and fined Rs. 3. On appeal the Acting

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Joint Magistrate set aside the conviction, giving as his reason that the Court was not properly constituted and the presiding Magistrate should not have availed himself of the casting vote in a court of two.

The Sessions Judge has referred the case on the ground that the acquittal is erroneous (i) because the Court was legally constituted, being a bench of two Special Magistrates, one of whom was a pensioned District Munsif, "that is, a Magistrate of experience" "and duly constituted Chairman under the notification of Government, dated 30th July 1890, and (ii) because the rules framed by Government for the guidance of benches of Magistrates as embodied in the latest Government Order on the subject, viz., G.O., dated 27th August 1891, No. 1713, Judicial, clearly "give the Chairman of the bench a casting vote in cases of difference of opinion arising between the members of the bench." The Judge has overlooked the fact that the trial in question took place in April 1891, *i.e.*, some four months prior to the notification referred to by him. However, as already pointed out, the rules as contained in this notification are, so far as they affect the case now under consideration, *i.e.*, a case under clause (1) of paragraph 1 of the notification, in no way different from the rules in force since July 1889, and if the Court was legally constituted, the Chairman clearly had, under the rules, power to decide the case by his casting vote.

But was the Court legally constituted? This question must be answered in the negative. It is clear in reading the whole of paragraph 1 (including the proviso) of the rules as amended by Government Order, dated 18th July 1889, that in the absence of a salaried Magistrate the bench could not consist of less than three members. Government Order, dated 30th July 1890, merely empowered the benches of Magistrates at Madura and Dindigul to try, even in the absence of a salaried Magistrate, the offences under the Penal Code specified in clause (1) of paragraph 1 of the rules a class of offences which was theretofore triable by them only in conjunction with a salaried Magistrate, and it appointed specially-designated presidents for the trial of such cases, but the power was given and the Chairman appointed subject to the rule contained in the proviso to paragraph 1. The Joint Magistrate was, therefore, right in setting aside the conviction in this case on the ground that the Court was not legally constituted.