

KRISHNANA
CHARIAR
v.
APPASANI
MUDALIAR.

JUDGMENT.—The decision in *Sambasiva v. Srinivasa*(1) by which the District Judge considered himself bound was not passed with reference to the last clause of section 244 of the Civil Procedure Code, which clause was added by Act VII of 1888. The effect of the amendment was considered in *Manikkam v. Tatayya*(2) and the decision in *Badri Narain v. Jai Kishen Das*(3) was referred to with approval as deciding the question. We are of opinion that the effect of the amendment is to give the right of appeal against an order determining whether a party applying for execution is or is not the representative of the decree-holder.

We allow this second appeal with costs and remand the appeal to the District Judge for disposal according to law.

APPELLATE CRIMINAL.

Before Mr. Justice Benson and Mr. Justice Moore.

KING-EMPEROR

v.

ALAGARISAMI PATHAN AND ANOTHER (ACCUSED).*

Criminal Procedure Code—Act V of 1898, s. 202—Failure to “record reasons” for postponing issue of process and inquiring into case—Irregularity.

By section 202 of the Criminal Procedure Code, if a Magistrate is not satisfied as to the truth of an offence he may, when the complainant has been examined, “record his reasons, and may then postpone the issue of process” and inquire into the case :

Held, that the failure on the part of a Magistrate to record his reasons is at most an irregularity, and unless it in fact occasions a failure of justice is not a ground for setting aside his order.

PETITION to revise an order of a Sessions Court. The order was as follows :—“This is an application to set aside the order, dated 25th May 1901, of the Second-class Magistrate of Madura Town, dismissing petitioner’s complaint. The complaint was presented on 10th April 1901, and on that day, complainant was examined on oath

(1) I.L.R., 12 Mad., 511.

(2) I.L.R., 21 Mad., 388 at p. 390.

(3) I.L.R., 16 All., 483.

* Criminal Revision Case No. 367 of 1901, under sections 435 and 439 of the Criminal Procedure Code, praying the High Court to revise the order of H. Moberly, Sessions Judge of Madura, in Criminal Revision Petition No. 93 of 1901, setting aside the order of A. R. Rajagopala Chettiar, Second-class Magistrate, Madura, in Calendar Case No. 280 of 1901.

KING-
EMPEROR
V.
A. LAGARTSAMI
PATHAN.

as required by Criminal Procedure Code, section 200. Thereupon the Sub-Magistrate passed the following order:—‘Section 406, Indian Penal Code, preliminary inquiry. Notice to first accused.’ On the 22nd April some inquiry was made and the Magistrate ordered certain summons to be issued. On the 25th May he dismissed the complaint and, three days later, recorded the following extraordinary order:—‘I distrusted the truth of the complaint as there was a case of assault preferred by one of the accused pending against the complainant. I resolved, therefore, to make a preliminary inquiry under section 202, Criminal Procedure Code. The reason should have been recorded before the preliminary enquiry began. As it was not done then I do it now and utilize the information got in the enquiry made already, so that it may not be said that the reason not having been recorded the dismissal under Criminal Procedure Code, section 203, is not valid.’ Section 202 of the Criminal Procedure Code authorises a Magistrate of the first or second class, if he is not satisfied as to the truth of a complaint to postpone the issue of process against the accused and to enquire into the case only if he has recorded his reasons for distrusting the truth of the complaint. The words ‘may then postpone the issue of process, &c.’ show that unless and until reasons are recorded the issue of process may not be postponed and no local inquiry may be made. An inquiry made without reasons for distrusting the truth of the complaint is illegal, and manifestly it cannot be made legal by the Magistrate making certain remarks after he has dismissed the complaint. The preliminary inquiry made by the Magistrate was illegal, for he issued process to one of the accused. In my opinion section 537 (a) of the Criminal Procedure Code does not apply to this case, for the inquiry made by the Magistrate was not an inquiry under the Criminal Procedure Code, but an inquiry distinctly prohibited by the Criminal Procedure Code. If the Magistrate had recorded his reasons for distrusting the truth of the complaint and then made an inquiry, any error, omission or irregularity in the inquiry would have been saved by Criminal Procedure Code, section 537 (a); but here the inquiry is illegal *ab initio*. If a Magistrate, not being empowered by law in this behalf, tries an offender or decides an appeal, his proceedings are void. In the present case the Magistrate made an inquiry which he was not empowered to make, and he was manifestly not acting in good faith. It appears to me that his proceedings are void. If I am wrong in this view, it is certain that the Magistrate has acted on

KING-
EMPEROR
2.
ALAGARISAMI
PATHAN.

documentary evidence, which should not have been admitted as the documents had not been proved. For these reasons I set aside the Sub-Magistrate's order and direct the present Sub-Magistrate to make further inquiry into the complaint." The case was heard by a Sub-Magistrate who held it to be a false case and dismissed it under section 203 of the Code of Criminal Procedure.

The accused preferred this criminal revision petition to the High Court against the order of the Sessions Judge.

T. Rangachariar for the accused.

The Public Prosecutor (Mr. *E. B. Powell*) for the Crown.

JUDGMENT.—This Court has, in its order in the case of *Venkatesalu Naidu v. Durvasa Rangayyan*(1) pointed out to the learned Sessions Judge that his reading of section 202, Criminal Procedure Code, is incorrect. The Magistrate had jurisdiction to act under section 202 and his failure to record his reasons was at most an irregularity, and unless it, in fact, occasioned a failure of justice it could be no ground for setting aside his order. The Sessions Judge does not suggest that the order was wrong on the merits and we see no reason to hold that it was so.

We set aside the order of the Sessions Judge, dated 5th September 1901.

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, Mr. Justice Davies and
Mr. Justice Moore.*

NARAYANASAMI REDDI (DEFENDANT), APPELLANT,

v.

OSURU REDDI (PLAINTIFF), RESPONDENT.*

Letters Patent, Art. 15—"Judgment"—Revision petition against decree in small cause suit—Difference of opinion—Appeal—Civil Procedure Code—Act XIV of 1882, s. 575—Contract Act—Act IX of 1872, s. 72—Right to recover money had and received to plaintiff's use unaffected by section 72.

The plaintiff in a small cause suit having obtained a decree, the defendant filed a civil revision petition in the High Court. At the hearing by a Bench, one

(1) Criminal Revision Case No. 263 of 1901, (unreported).

* Appeals Nos. 1 and 2 of 1900, under section 15 of the Letters Patent, against the judgment of Mr. Justice Boddam, in Civil Revision Petitions Nos. 59 and 60 of 1899 preferred under section 25 of the Provincial Small Cause Courts Act, to revise the decrees of A. Kuppusami Ayyangar, District Munsif of Sholinghur, in Small Cause Suits Nos. 689 and 690 of 1898.