

APPELLATE CRIMINAL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Subrahmania Ayyar.*

NARAYANASWAMI NAIDU

v.

EMPEROR.*

1906.
July 30

*Criminal Procedure Code—Act V of 1898, s. 562—Power conferred by section not
confined to Courts of First Instance.*

The power of passing orders under section 562 of the Code of Criminal Procedure is not confined to Courts of First Instance.

Emperor v. Birch, (I.L.R., 24 All., 306), approved.

THE facts necessary for this report are set out in the letter of reference which is as follows:—

"The appellant Narayanaswami Naidu, a youth of 21 years of age, appears to have been keeping a woman named Govindammal. On the 13th March 1906 he could not find her and on making enquiries seems to have been informed by some one that she was concealed in the house of one Chinnasami Pillai. Thereupon at 2 A.M. he entered Chinnasami Pillai's house, demanded his concubine, and raised such a disturbance that the police had to be summoned. The appellant was convicted after trial of offences under sections 447 and 352, Indian Penal Code, and sentenced to undergo rigorous imprisonment for two weeks. On appeal the Deputy Magistrate affirmed the conviction (he should more approximately have altered it to one under sections 448 and 352, Indian Penal Code), but remitting the sentence, in view of the trivial nature of the offence and the youth of the appellant, directed under section 562, Criminal Procedure Code, that he should enter into a bond for Rs. 50 with one surety for a like amount to be of good behaviour for six months.

The attention of the Deputy Magistrate was drawn to the fact that the power conferred by section 562, Criminal Procedure Code,

* Case Referred No. 38 of 1906 (Criminal Revision Case No. 185 of 1906) for the orders of the High Court under section 438 of the Code of Criminal Procedure by J. E. Robertson, Esq., District Magistrate of Salem, in his letter, dated 10th April 1906 (No. 550 M.R. of 1906).

NARAYANA-
SWAMI
NAIDU
v.
EMPEROR.

can only be exercised by the Court before whom an offender is convicted by a Magistrate dealing with the matter in the manner provided by section 380. The Deputy Magistrate however relies on the ruling in *Emperor v. Birch*(1) in support of his procedure. With all deference to the learned Judge who gave that ruling, I respectfully submit that it is opposed to the plain wording of section 562 and to the intention of the Legislature. In the statement of objects and reasons against section 423 it is noted that the insertion of clause (d) is rendered necessary by the amendment of section 106.

As regards the merits too it seems doubtful if the offence is so trivial as the Deputy Magistrate thinks. The appellant had no justification for considering that the complainant Chinnasami Pillai was concealing his concubine; Chinnasami Pillai is a man of respectable character and to burst into his house at 2 A.M. and create an uproar is hardly a trivial matter. Further the appellant was also complicated in Criminal Appeal No. 55 of 1906 on the same Deputy Magistrate's file in respect of vexatious charge regarding this very matter and the Sub-Magistrate's order directing him to pay compensation was upheld.

The Acting Public Prosecutor in support of Reference.

JUDGMENT.—We do not think it was the intention of the Legislature by the use of the words "Court before whom he is convicted" in section 562, Criminal Procedure Code, to limit the power of making orders under that section to the Court of First Instance. The proviso to the section appears to us inconsistent with the view that this was the intention of the Legislature.

We agree with the decision in *Emperor v Birch*(1).

(1) I L R., 24 All., 306.