

APPELLATE CRIMINAL.

*Before Sir Arnold White, Chief Justice.*1906
February 7.

EMPEROR

v.

CHINNAPAYAN.*

Criminal Procedure Code—Act V of 1898, ss. 243, 253—Trial of a warrant case as a summons case not a mere irregularity.

Where a Magistrate in trying a warrant case does not adopt the course prescribed by section 252 of the Code of Criminal Procedure, but convicts the accused on his own admission without taking evidence and without framing a formal charge, such procedure is not a mere irregularity and the conviction will be set aside.

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

One Cinnapian of Cuddalore New Town was charged by the Station House Officer, Pudukalaiyam town, for unlicensed manufacture and sale of opium under section 9 (b) and (f) of the Opium Act No. I of 1873. The Stationary Sub-Magistrate, Cuddalore, before whom the charge sheet was laid, did not record any evidence in support of the charge but asked the accused to plead to the charge, convicted him on his own plea and sentenced him on 18th October 1905 to suffer two months' simple imprisonment in Calendar Case No. 1402 of 1905 on his file. An offence under section 9 of the Opium Act is a warrant case, whereas the Sub-Magistrate tried it as a summons case. The accused appealed against his conviction to the Sub-Divisional Magistrate, Cuddalore Division, who while recognising that the Sub-Magistrate's procedure in trying the case as a summons case was irregular nevertheless held that the said irregularity had not occasioned a failure of justice. He accordingly confirmed the conviction and dismissed the appeal on 25th November 1905 in Criminal Appeal No. 24 of 1905 on his file. While the appellate judgment came up for perusal I noticed that the grounds of appeal had not been stated therein, and on calling for the records found

* Case Referred No. 4 of 1906 (Criminal Revision Case No. 17 of 1906) for the orders of the High Court under section 438 of the Code of Criminal Procedure by A. R. Cumming, Esq., District Magistrate of South Arcot, in his letter, dated 31st December 1905 (R.O.C. No. $\frac{2234}{\text{May}}$ of 1906).

that the appellant had denied his plea of guilty in the lower Court. In view of the ruling in *Mohideen Abdul Kadir v. Emperor* (1) I consider that the conviction should be set aside and a retrial ordered.

EMPEROR
v.
CHINNA,
PAPAN

The Public Prosecutor appeared in support of the reference.

ORDER.—There is no doubt that this case ought to have been tried as a warrant case and not as a summons case. If it had been tried as a warrant case, it would have been the duty of the Magistrate under section 252 of the Code of Criminal Procedure to take such evidence as might be produced in support of the prosecution; and the accused could not have been called upon to plead until after a charge had been framed and read and explained to him (section 255).

The Magistrate appears to have convicted the accused under section 243, on an admission made by the accused, without taking any evidence and without framing a formal charge. It seems to me this is something more than an irregularity, and that the accused may possibly have been prejudiced by the procedure adopted by the Magistrate.

The conviction must be set aside. As the accused has served his term of sentence, there is no object in ordering a new trial.

APPELLATE CRIMINAL.

Before Mr. Justice Subrahmanya Ayyar.

VYTHIANADA TAMBIRAN (PETITIONER), PETITIONER,

v.

MAYANDI CHETTY (COUNTER-PETITIONER), RESPONDENT.*

1906.
January 31.

Criminal Procedure Code—Act V of 1898, s. 148 (3)—Award of costs may be made within a reasonable time after disposal of the main question.

An award of costs under section 148 (3) of the Code of Criminal Procedure should, in the usual course, be contemporaneous with the decision of the main question. Where, however, circumstances require the postponement of the award of costs, it should be made within a reasonable time after the disposal of the principal subject of the proceeding, in the presence of both parties.

(1) I. L. R., 27 Mad., 238.

*Criminal Revision Case No. 355 of 1905, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the order of C. G. Maokay, Esq., Head Assistant Magistrate of Chingleput, in Miscellaneous Case No. 33 of 1905.