

KANNAM-
BATH
IMBICHI
NAIR
v.
MANATHA
NATH
RAMAR
NAIR.

The case came on for hearing before a Bench constituted as above. Their Lordships delivered the following

JUDGMENT:—For reasons stated in the order dated the 31st July 1905, Mr. Barton's application to revoke the order of the District Judge was treated as an appeal.

We have now heard Mr. Barton and are unable to agree with his contention that we have only to deal with the objection against the order sanctioning prosecution under section 192, Indian Penal Code. Under the provisions of the Criminal Procedure Code, section 195, the Appellate Court has power to revoke any sanction granted by the Court against whose order the appeal is made, as also to grant sanction refused by it. The District Judge apparently came to the conclusion that the signature to the receipt as well as the thumb marks therein were really affixed by the first defendant and probably this is correct. There can, however, be no doubt that the payment of Rs. 150 and odd recited in the receipt is untrue. The question as to this payment was the crucial one, and as the petitioners stated on affirmation, positively, that they saw the payment made, we think the offence for which sanction for prosecution should be given is that of giving false evidence under section 193, Indian Penal Code. The order of the District Judge will be modified accordingly.

APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Boddam.

KANNAN NAMBIAR, PLAINTIFF,

v.

ANANTAN NAMBIAR AND OTHERS, DEFENDANTS.*

Jurisdiction—Subsequent extension of powers will not apply to a suit previously instituted.

A suit rightly instituted as an original suit in a District Munsif's Court must remain for trial as an original suit in such Court and a District Court, by a

* Referred Case No. 14 of 1904 stated under section 646-B of Act XIV of 1882 by M.R., Ry. A. Venkataramana Pai, District Judge of North Malabar, in Small Cause Suit No. 92 of 1904 (*vide* Referred Case Nos. 15 to 20 of 1904.)

subsequent extension of its powers as a Court of Small Causes cannot acquire jurisdiction to try such a suit.

Hari Kamayya v. Hari Venkayya (I.L.R., 26 Mad., 212) followed.

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

“ I have the honour, under section 646-B of the Civil Procedure Code, to submit the records in the seven cases shown in the list appended, and to state my reasons for considering that the order of the District Munsif of Tellicherry, returning the plaints as not cognizable by him is not correct.

These suits were originally filed in the District Munsif's Court, Badagara, as *ordinary* suits on the dates shown against their number. In the recent re-distribution of work among the Munsifs in this district, the *amsams* in which the cause of action arose in these cases were transferred to the District Munsif of Tellicherry with effect from 30th May last, and consequently the cases were transferred to the file of the latter Court.

By the notification of Government published at page 834 of the *Fort St. George Gazette*, Part I, dated 26th August 1902, the Small Cause jurisdiction of the District Court is limited to the Tellicherry Munsif, and consequently when the aforesaid *amsams* were added to the Tellicherry Munsif, the District Court acquired Small Cause jurisdiction over this area. The District Munsif of Tellicherry has returned the plaints to be presented to the proper Court, he being of opinion that the claims being of the nature of Small Causes and for sums below Rs. 500 under the jurisdiction of the Small Cause Side of the District Court, no other Court within such jurisdiction could try them. But he appears to have overlooked the ruling in *Hari Kamayya v. Hari Venkayya* (1) that when a suit is properly filed in a Court of *ordinary* jurisdiction, *i.e.*, subject to appeal, it cannot be dealt with by a Court of Small Causes of *final* jurisdiction subsequently established. The suits under reference were properly instituted before the Badagara Court as *ordinary* suits, and are now triable by the Court of the District Munsif of Tellicherry to which has been transferred the business of the former Court which ceased to be the Court for the local area in question, and have to be dealt with in the same way as if they had been originally instituted in the

(1) I.L.R., 26 Mad., 212

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Tellicherry Court when it was competent to entertain them, notwithstanding that the District Court subsequently acquired Small Cause jurisdiction over the said area on its transfer from the Badagara to the Tellicherry Munsif."

The parties were not represented.

JUDGMENT. — When the suits were instituted in the Badagara Court, they were rightly instituted there as original suits and under the ruling at *Hari Kamayya v. Hari Venkayya* (1) referred to by the District Judge they remained for trial as original suits. The District Munsif of Tellicherry will therefore place them on his file and dispose of them as such.

APPELLATE CRIMINAL.

Before Sir Arnold White, Chief Justice, Mr. Justice Subrahmaniam Ayyar, Mr. Justice Davies, Mr. Justice Benson and Mr. Justice Moore.

EMPEROR

v

CHINNA KALIAPPA GOUNDEN AND ANOTHER.*

1905
November 5,
21.

— *Criminal Procedure Code—Act V of 1898 s. 203—Dismissal of complaint under, no bar to Magistrate rehearing complaint.*

On a reference by the Sessions Judge as to whether it was competent to a Magistrate, after dismissing a complaint under section 203 of the Code of Criminal Procedure, to rehear the complaint, when such order of dismissal had not been set aside by a higher Court :

Held, (SUBRAHMANIAM AYYAR and DAVIES, JJ., dissenting) that the dismissal of a complaint under section 203 of the Code of Criminal Procedure does not operate as a bar to the rehearing of the complaint by the same Magistrate, even when such order of dismissal has not been set aside by a competent authority.

Mahomed Abdul Mennan v. Panduranga Row, (I.L.R., 28 Mad 256), dissented from.

Dwarkanath Mondul v. Beni Madhab Banerjee, (I.L.R. 28 Cal. 652), of which approved and followed.

(1) I.L.R. 26 Mad., 212.

* Case Referred No. 89 of 1905 (Criminal Revision Case No. 365 of 1905) for the orders of the High Court under section 438 of the Code of Criminal Procedure by G. F. T. Power, Esq., Sessions Judge of Coimbatore in his letter, dated 13th September 1905.