

APPELLATE CRIMINAL.

*Before Sir S. Subrahmaniam Ayyar, Officiating Chief Justice,
and Mr. Justice Boddam.*

1905
September 19,
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SURYANARAYANA ROW AND ANOTHER (PETITIONERS IN
CRIMINAL REVISION PETITION No. 34 OF 1905),

BALA RAMAYYA (PETITIONER IN CRIMINAL REVISION PETITION
No. 35 OF 1905),

v.

EMPEROR (RESPONDENT IN BOTH).*

Criminal Procedure Code Act V of 1898, ss. 476, 435, 439—Power of High Court to interfere in proceedings under s. 476—Madras Act III of 1869, scope of—Judicial Proceedings—Pleader, propriety of imputations made by.

The High Court has power to revise proceedings under section 476 of the Code of Criminal Procedure when such proceedings are null and void for want of jurisdiction.

Evanheli Athan v. King Emperor (I.L.R., 26Mad., 98), referred to and distinguished. Madras Act III of 1869 does not authorise the issuing of summons in a departmental inquiry for bribery.

The pendency of an appeal by the accused, who had paid the fine imposed on him, would not give any Court authority or power to arrest him or to take recognizances from him for appearing at any further enquiry.

The presenting of a petition imputing improper motives to a Magistrate who is illegally detaining a person to take recognizances from him to enforce his attendance for the foregoing purpose will not justify any action by such Magistrate under section 476 of the Code of Criminal Procedure as the offence is not committed in the course of a *judicial proceeding*, nor is it brought to his notice in the course of such proceeding.

THE facts necessary for this report are fully set out in the judgment.

Dr. S. Swaminadhan and V. Krishnaswami Ayyar for petitioners.

The Public Prosecutor for respondents.

ORDER—In Criminal Revision Cases Nos. 34 and 35 of 1905.—
The material facts bearing upon these revision cases are shortly

* Criminal Revision Petition Nos. 34 and 35 of 1905, presented under sections 435 and 439 of the Code of Criminal Procedure and section 15 of the Charter Act, praying the High Court to revise the order of M.E.Ry. P. Nagasa Row, Deputy Magistrate, Head-quarter Division, Kistna District, in his proceedings dated 21st December 1904 *vide* Referred Conviction No. 5 of 1905 and Criminal Miscellaneous Petition No. 389 of 1905).

as follow: Bala Ramayya, the petitioner in Criminal Revision Case No. 35 of 1905, had been convicted on a charge of theft and sentenced to pay a fine of Rs. 20 which he paid (see Criminal Revision Case No. 36 of 1905). He preferred an appeal against that decision which was heard by the Deputy Magistrate Mr. P. Nagesa Rao in July 1904. The Deputy Magistrate directed the Sub-Magistrate who tried the case in the first instance to record further evidence. While the matter was thus pending a complaint of bribery in connection with the theft case made by Bala Ramayya against the Sub-Magistrate to the District Magistrate was being enquired into departmentally. Part of the departmental enquiry was being made by Mr. Nagesa Rao. On the 6th October Mr Nagesa Rao summoned Bala Ramayya to appear before him on the 19th idem in connection with the departmental enquiry. Bala Ramayya did not appear, and Mr. Nagesa Rao thereupon issued a warrant for his arrest. The warrant was not executed as Bala Ramayya was reported to be not forthcoming. On the 3rd December 1904 Bala Ramayya came to the Court of the Deputy Magistrate on some other business. Then Mr. Nagesa Rao directed him to execute two recognizances and pending their execution he was detained by the Deputy Magistrate's person. One of the recognizances was for Bala Ramayya appearing before the Sub-Magistrate on the 12th in connection with the additional evidence ordered to be taken, and the other for his appearance before Mr. Nagesa Rao himself on the 13th idem. Bala Ramayya at first refused to execute these recognizances protesting that he should not be called upon to do so and in support of his objection he got the petitioners in Criminal Revision Case No 34 of 1905, one a High Court Vakil and the other a First-grade Pleader, to present a petition in which it was prayed that Bala Ramayya might be released without any security or recognizance being taken from him. As Mr. Nagesa Rao had, before this petition was presented, left the Court-house, his work in Court being over, and gone to his residence, the petition was handed to Mr. Nagesa Rao there. As in spite of the petition recognizances were insisted on Bala Ramayya executed them and thereupon these same vakils presented a further petition to Mr. Nagesa Rao (also in his house) in which they repeated their objections and prayed that the security and recognizances taken should be cancelled and Bala Ramayya released. This request was not

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complied with. With reference to paragraph 6 of the petition which runs as follows :—

"The petitioner believes that this Court namely M.R.By. " P. Nagesa Rao Pantulu Garu is actuated by malice pure and " simple against this petitioner in arresting him and detaining him " unlawfully in custody from about 11-30 A.M. till about 4-30 P.M. " this day." Mr. Nagesa Rao directed (purporting to act under section 476 of the Criminal Procedure Code) Bala Ramayya's two vakils to be prosecuted before the Divisional Magistrate for an offence under section 228 of the Indian Penal Code, viz. " intentionally offering an insult to a public servant whilst such " public servant was sitting in a stage of a judicial proceeding " and Bala Ramayya for abetting them in committing this offence. The Public Prosecutor took the preliminary objection that these revision petitions did not lie with reference to the Full Bench ruling in *Eranholi Athan v. King Emperor*(1). We overrule the objection inasmuch as in our opinion Mr. Nagesa Rao was acting entirely without jurisdiction in the matter. Now as to the departmental enquiry he was holding it was purely an executive matter. Our attention has not been drawn to any provision of law empowering Mr. Nagesa Rao to compel the attendance of Bala Ramayya before him in connection with the enquiry. Of course it was not a case to which the Act regarding the issue of Revenue Summonses Madras Act III of 1869 applied and it follows that the issue of a warrant for Bala Ramayya's non-attendance in pursuance of the summons was a void proceeding. As regards also the matter of further evidence directed to be taken before the Sub-Magistrate it was not competent to Mr. Nagesa Rao to compel the attendance of Bala Ramayya either before the Sub-Magistrate or before himself. As we observed in Criminal Revision Case No. 36 of 1905 it was for Bala Ramayya, if he chose, to appear at the enquiry or not. It is to be remembered that he had been sentenced to pay a fine and the fine had been paid. The pendency of an appeal preferred by him would not give any Court authority or power to arrest him. The only result of the appeal could be either the reversal or confirmation of the sentence already passed. There was no question of enhancement of sentence. Of course to warrant an order under section 476 of the

(1) L.L.R., 26 Mad., 98.

Criminal Procedure Code directing a person to be prosecuted the offence stated to have been committed by him should have been committed before the Court in the course of a judicial proceeding or should have been brought under its notice in the course of such a proceeding. Neither is the case here. For the presentation of the petition in question was in regard to and in the course of the detention of Bala Ramayya and the taking of recognizances from him both of which were, as shown above, absolutely illegal acts.

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The Full Bench ruling relied on by the Public Prosecutor cannot possibly be held to apply to a case like the present. It is equally clear that Mr. Nagesa Rao was not at the time the petition was handed to him a public servant *sitting in any stage of a judicial proceeding* and this the Public Prosecutor conceded.

The order of Mr. Nagesa Rao directing the prosecution of the Pleaders and Bala Ramayya is hereby set aside.

We cannot help observing that the conduct of Mr. P. Nagesa Rao in detaining Bala Ramayya under the circumstances and compelling him to find security and execute the recognizances has been throughout so high handed and perverse as almost to justify (if that were possible) the statement in the paragraph of the petition complained of, though we cannot permit any legal practitioner to impute improper motives or corruption to a judicial officer in petitions addressed to him in connection with proceedings pending before him as such officer.

In Referred Case No. 5 of 1905 and Civil Miscellaneous Petition No. 339 of 1905.

As regards Referred Case No. 5 of 1905 and Civil Miscellaneous Petition No. 339 of 1905 it is needless to say that we entirely agree with Mr. Bell that a Pleader cannot be permitted to make imputations on judicial officers in petitions presented to them. The proper procedure in cases where such petitions are presented would be to return them to the Pleader for amendment or to reject them as scandalous. For reasons however given in our judgment in Criminal Revision Nos. 34 and 35 of 1905 these are not cases calling for any further action.