

ARUNA-
CHELLAM
v.
EMPEROR.

him. We think that the commitment of all the accused must be quashed and fresh inquiry held at which the ninth accused should be examined as required by section 337(2) of the Criminal Procedure Code.

APPELLATE CRIMINAL.

Before Mr. Justice Wallis.

GANAPATHI BHATTA

v.

EMPEROR *

1908.
February 21.

Criminal Procedure Code, Act V of 1898, s. 117(4)—Parties in conflict with one another cannot be dealt with in one enquiry—Such joinder illegal.†

Two or more persons are not 'associated together in the matter under enquiry' within the meaning of section 117(4) of the Criminal Procedure Code when there is a conflict between them, and they cannot therefore be dealt with in the same enquiry under the provisions of that section.

Such a joinder is not a mere irregularity but an illegality which will vitiate the proceedings.

THE first accused was the maktesser of a certain temple and the second accused an archaka of the temple. The first accused dismissed the second on the ground of misconduct and appointed the third accused in his place. The first and third accused began to collect men to oust the second accused from the temple and the second accused likewise collected men to assert his rights

The Police reported to the Magistrate that there was a likelihood of a breach of the peace. The Deputy Magistrate issued notice to the accused to show cause why they should not be bound over to keep the peace. He joined them all in the same enquiry and after recording evidence, he directed them to execute bonds to keep the peace for a year.

The District Magistrate confirmed the order on revision, holding that the joining of the third accused in a single enquiry was an irregularity by which they were not prejudiced.

* Criminal Revision Case No. 474 of 1907, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the decision of M. R. Ry. R. Rama Rau, General Duty Deputy Collector of South Canara, in Miscellaneous Case No. 14 of 1907.

The first accused moved the High Court under section 439 of the Criminal Procedure Code.

Mr. *K. Ramanatha S enai* and *K. P. Madhava Rao* for petitioners.

GANAPATHI
BHATTA
v.
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The Public Prosecutor *contra*.

ORDER.—Under section 117 (4) of the Code of Criminal Procedure where two or more persons have been “associated together in the matter under enquiry” they may be dealt with in the same or separate enquiries as the Magistrate may think fit. Where the parties have been in conflict with one another, I do not think they can be said to have been associated together in the matter under enquiry within the meaning of the section. Consequently the joinder in the present case is unauthorised. Such a joinder might often have inconvenient consequences (*Kamal Narain Chowdry v. Emperor* (1)). The question then is, is the joinder an illegality? I am inclined to think that it is. If so, *Subramani Aiyar v. King Emperor* (2) applies, and the order against the first accused must accordingly be discharged.

APPELLATE CRIMINAL.

Befo e Mr. Justice Benson and Mr. Justice Miller.

ALAGU AMBALAM AND OTHERS.

v.

EMPEROR.*

1908.
February 12,
13.

Criminal Procedure Code, Act V of 1898, ss. 407, 428—District Magistrate may withdraw part-heard appeals—Such Magistrate not bound to examine witnesses summoned.

Section 407 of the Criminal Procedure Code places no restriction on the power of the District Magistrate to withdraw appeals from Subordinate Magistrate, and it is competent to him to withdraw part-heard appeals.

There is nothing in section 428 of the Code which renders it obligatory on the District Magistrate so withdrawing an appeal to examine witnesses summoned by the Subordinate Magistrate from whom the appeal is withdrawn.

(1) 11 C. W. N., 472.

(2) I. L. R., 25 Mad., 61.

* Criminal Revision Case No. 396 of 1907, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the order of the Court of the Additional District Magistrate of Madura in Criminal Appeal No. 41 of 1907, presented against the order of the Second-class Magistrate of Tiruppattur, in Calendar Case No. 265 of 1907.