

ALAGIRISAMY  
NAIDU  
v.  
VENKATA-  
CHELLAPATHY  
AYYAR.

The same view has been taken in *Hafizuddin Chowdhry v. Abdool Aziz*(1), which was followed in *Balkishanshiwa Bakas v. Wagarsing*(2). The case *Mangal Khan v. Salim-ullah Khan*(3), appears to have been decided on the same principle.

Following therefore the above decisions we hold that the application by the widow is in accordance with law.

We accordingly set aside the order of the District Judge, direct him to restore the appeal to his file and dispose of it in accordance with law. The appellant is entitled to the costs of this appeal.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Benson and Mr. Justice Sankaran Nair.*

PIRUMALLA NAYUDU

v.

EMPEROR.\*

1907  
October 18

*Criminal Procedure Code, Act V of 1898, ss. 195, 537 - No sentence of competent Court to be reversed for want of sanction under s. 195.*

The words 'subject to the provisions hereinbefore contained' in section 537 of the Code of Criminal Procedure must not be construed in such a way as to nullify the provisions of clause (b) of the same section that no sentence of a Court of competent jurisdiction shall be reversed on appeal 'for want of any sanction required by section 195.'

Want of sanction under section 195 is no ground on appeal for setting aside a conviction after trial for any offence mentioned in the section.

The accused a Station-house officer was committed to the Sessions of Kurnool on charge of offences under sections 342, 195, 221 and 216 of the Indian Penal Code. No sanction was given under section 195 of the Code of Criminal Procedure in respect of the offences under sections 195 and 211. The objection was not taken at the preliminary trial. It was taken before the Sessions Court and overruled and the accused was convicted.

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1) I. L. R., 29 Cal., 755 (2) I. L. R., 26 Bom., 76. (3) I. L. R., 16 All., 26.

\* Criminal Appeal No. 481 of 1907, presented against the conviction and sentence of M. Ghose, Esq., Sessions Judge of Ouddapah Division, in Case No. 20 of the Calendar for 1907.

Accused appealed to the High Court.

*K. Ramachandra Ayyar* for The Hon. Mr. *L. A. Govinda-  
Fagava Ayyar* for appellant.

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The Public Prosecutor in support of the conviction.

JUDGMENT.—It is argued for the appellant that the conviction for offences punishable under sections 195 and 211 of the Indian Penal Code is illegal because the sanction required by section 195 of the Code of Criminal Procedure was not obtained. In support of this argument the case of *Raj Chunder Mojumdar v. Gour Chunder Mojumdar* (1) is relied upon; but that case has been expressly dissented from by a Bench of this Court in the case of *Ismal Rowther v. Shunmugaveul Nandan* (2) where it was held that the special provision in section 537 (b) of the Code of Criminal Procedure cannot be nullified by the general provision in section 105 of the Code of Criminal Procedure. We agree with this view. The words “subject to the provisions hereinbefore contained” which occur at the beginning of section 537 cannot be construed in such a way as to nullify the express provision of the latter part of the section, which in clause (b) enacts that no sentence passed by a Court of competent jurisdiction shall be reversed on appeal “for want of any sanction required by section 195.” There are other sections besides section 195, such as sections 132, 196 and 197 of the Code of Criminal Procedure, which require sanction to be obtained in certain cases, and these sections are not affected by section 537 (b). Full effect, therefore, can be given to the opening words of the section without construing them as referring to section 195. Moreover, on principle, it is difficult to see why the want of sanction under section 195 should be held to be a good ground for setting aside a conviction after trial. Before trial, no doubt, a man is presumed to be innocent, and it is reasonable to protect him from prosecution for the offences specified in section 195 unless and until a competent authority is of opinion that there is sufficient ground for an enquiry and sanctions the prosecution. But it is different when the result of the trial has shown that the guilt of the accused is no longer a matter of doubt, but has been proved in a formal trial. We therefore overrule the preliminary objection. On the merits we agree with the Sessions Judge. There is a large

(1) I. L. R., 22 Calc., 176.

(2) I. L. R., 29 Mad., 149.

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body of direct evidence that Subbadu, and not Santivadu, was the thief who was arrested in the house of the first prosecution witness. The defence is that all this evidence was concocted at the instance of the Police Inspector owing to his enmity towards the accused. We are, however, unable to say that the evidence shows that there was any such enmity on the part of the Inspector as to render it likely that he would bring a false charge of this kind against the accused, or that he did, in fact concoct the case.

We dismiss the appeal.

## APPELLATE CRIMINAL.

*Before Mr. Justice Wallis.*

1607  
October  
23

ARUMUGA GOVINDAN AND OTHERS (COUNTER PETITIONERS),  
PETITIONERS.

v.

VENKATASUBBIER AND ANOTHER (PETITIONERS), RESPONDENT

*Criminal Procedure Code, Act V of 1898, section 145—Magistrate holding inquiry under section 145 cannot direct Subordinate Magistrate to take evidence—order based on such evidence void as made without jurisdiction.*

A Magistrate holding an inquiry as to possession under section 145 clause 4 of the Code of Criminal Procedure, is bound to take the evidence himself and cannot delegate to a Subordinate Magistrate the duty of recording such evidence.

An order of such Magistrate based solely and substantially on evidence recorded by a Subordinate Magistrate is not an order based on legal evidence and is void as made without jurisdiction.

*In re Baikant Kumar*, (3 C. L. R., 134), referred to.

*Kolha Koer Muneswar Tewari*, (I.L.R., 34 Cal., 84), referred to.

THE respondents (petitioners) presented a petition to the Sub-Magistrate of Perunthurai alleging that the counter-petitioners were causing disturbances in respect of certain land in their possession and that as there was a likelihood of a breach of peace,

\*Criminal Revision Case No. 230 of 1907 presented under clause 15 of the Letters Patent, praying the High Court to revise the order of Deputy Magistrate of Erode division in Miscellaneous Case No. 5 of 1907—*vide* Criminal Revision Case No. 367 of 1907.