

MUNEO informed the Sessions Judge that the appropriate order in the case was *not* one for further inquiry under section 437, but a reference to themselves, as they alone had power to set aside a finding of fact under section 439, Criminal Procedure Code. In fact they would have proceeded to deal with the case referred on the merits and passed the necessary orders themselves.

AND  
PINNEY, JJ.  
—  
VENKATA  
SUBBA REDDI  
v.  
ATTYALU  
REDDI.

I am of opinion that the decision in *Lakshmi Narasappa v. Mekala Venka'appa*(1) is directly opposed to that of the Full Bench of this Court in *Queen-Empress v. Balasinnatambi* (2) and that it cannot be followed. I hold that the Sessions Judge had jurisdiction to make the order he did in the present case under section 437, and as there is no reason to suppose that he misused the discretion vested in him by law, the petition now before us must be dismissed.

## APPELLATE CRIMINAL.

*Before Mr. Justice Miller and Mr. Justice Sankaran-Nair.*

PALANIANDY GOUNDAN

v.

EMPEROR.\*

1908.  
December 8.

*Criminal Procedure Code, Act V of 1898, s. 350—Application of section to cases withdrawn from one Magistrate and transferred to another—'Trial' what is within s. 350 (a).*

The words of section 350 of the Code of Criminal Procedure are applicable to cases in which the case under enquiry on trial is withdrawn from one Magistrate, who thereupon ceases to exercise jurisdiction *therein* and is transferred to another.

A preliminary enquiry by a Magistrate into a case exclusively triable by the Court of Session is not a 'trial' before framing a charge within section 350 (a) and where such an enquiry is transferred, the Magistrate is not bound to rehear the case *de novo*

*Mohesh Chandra Saha v. Emperor*, [(1908) I.L.R., 35 Cal., 457], followed.

PETITION, under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the order of M. Abdul Hie Sahib, Head-quarters Deputy Magistrate of Salem, in a Criminal Miscellaneous Petition in Petition Revision Case No. 10 of 1908.

(1) (1908) I.L.R., 31 Mad., 133. (2) (1891) I.L.R., 14 Mad., 394.

\* Criminal Revision Case No. 558 of 1908.

The accused was charged with the offence of having caused grievous hurt and the Magistrate who took cognisance of the case, treated it as a 'register case' or preliminary inquiry into a case triable exclusively by the Court of Session. The District Magistrate transferred the case to the file of the First-class Sub-Divisional Magistrate of Salem and the accused (petitioner) applied that the witnesses should be examined *de novo*. The Sub-Divisional Magistrate having rejected his application, the petitioner moved the High Court under sections 435 and 439 of the Code of Criminal Procedure.

MILLER  
AND  
SANKARAN-  
NAIR, JJ.  
—  
PALANIANDY  
GOUNDAN  
v.  
EMPEROR.

*T. Anantha Chariar* for petitioner.

The Acting Public Prosecutor on behalf of the Crown.

*T. Subramania Ayyar* for complainant.

ORDER.—We agree with the view taken of section 350 of the Code in the recent decisions of the Calcutta High Court in *The Deputy Legal Remembrancer v. Upendra Kumar Ghose*(1) and in *Moresh Chandra Saha v. Emperor*(2), where learned Judges held that the words of that section are applicable to cases in which the case under enquiry or trial is withdrawn from one Magistrate who thereupon ceases to exercise jurisdiction *therein*, and is transferred to another. In this view the Deputy Magistrate's procedure in the present case was governed by section 350 and he was not bound to rehear all the prosecution witnesses. Nor was the accused in our opinion entitled by virtue of proviso (a) to section 350 to require a rehearing of the evidence.

The case before the Magistrate was a 'register case' or preliminary enquiry into an accusation of an offence triable exclusively by a Court of Session. It was not, in our opinion, a trial before the charge was framed but was an enquiry and therefore not provided for by proviso (a) to section 350. Even if the case were treated by the Magistrate as a warrant case the accused is not prejudiced by this construction of the section because by section 256 of the Code as soon as a charge is framed he can recall for cross-examination all the prosecution witnesses whose evidence has been taken and therefore should the proceedings become a trial he has a right equivalent to that of demanding a *de novo* enquiry.

We dismiss the petition.

(1) 12 C.W.N., 140.

(2) (1908) I.L.R., 35 Cal., 467.