

marriage and threw on the defendants the obligation to pay for it. We hold, therefore, that the plaintiff is entitled to recover the expenses of the marriage out of the joint-family property of the defendants.

We answer both parts of the question referred to in the affirmative. The Small Cause Court will provide for the costs of this reference.

BENSON  
AND  
SUNDARA  
AFYAR, JJ.  
—  
RANGANAIKI  
AMMAL  
v.  
RAMANUJA  
AIYANGAR.

## ORIGINAL CRIMINAL.

*Before Mr. Justice Ayling and Mr. Justice Spencer.*

*In re* VENKATESWARA SASTRI (ACCUSED), PETITIONER.\*

1911  
July 24, 25,  
August 2.

*Presidency Magistrates' Courts, jurisdiction of, inter se—Transfer, High Court has power of, from court of Chief Presidency Magistrate to court of another Presidency Magistrate—Criminal Procedure Code (Act V of 1898), ss. 21, cl. (2) ; 526, cl. (ii)—Charter Act, s. 15.*

The Court of the Chief Presidency Magistrate and those of the other Presidency Magistrates are "courts of equal jurisdiction" within the meaning of section 526 clause (ii), Criminal Procedure Code (Act V of 1898).

The High Court has power to transfer a case from the file of the Chief Presidency Magistrate to that of another Presidency Magistrate.

**APPLICATION** praying the High Court to order the transfer of Calendar Case No. 11453 of 1911 from the file of the Chief Presidency Magistrate's Court, Madras, to that of the Fourth Presidency Magistrate.

The facts of this case are set out in the order.

*P. Narayanamurti* for the petitioner.

The Crown Prosecutor on behalf of the Crown.

**ORDER.**—This is a petition for the transfer of Calendar Case No. 11453 of 1911 (a charge under section 293, Indian Penal Code) from the file of the Chief Presidency Magistrate to that of the Fourth Presidency Magistrate.

The learned Crown Prosecutor raises the preliminary objection that the Court of the Fourth Presidency Magistrate is not one of "Equal or Superior Jurisdiction" to that of the Chief Presidency Magistrate as contemplated in section 526, Criminal Procedure Code, and hence this court had no power to order the transfer prayed for.

\* Criminal Miscellaneous petition No. 201 of 1911.

AYLING  
AND  
SPENCER, JJ.

*In re*  
VENKA-  
TESWARA  
SASTRI.

It has been suggested that although this court may not possess the power in question under section 526, Criminal Procedure Code, it may possess it under clause 29 of the Letters Patent Act or under section 15 of the Charter Act. But the same limitation of the power to transfer is found in each of these and in our opinion no matter which enactment is considered our power to transfer depends entirely on whether, for the purpose of the sections quoted, we can regard the Court of a Presidency Magistrate as of equal jurisdiction to that of a Chief Presidency Magistrate.

We have not been referred to any ruling bearing on the point. In *In re T. Murugesu Mudaliar* (1), BHASHYAM AYYANGAR, J., expressed a doubt as to whether this court could transfer a case from the file of one Presidency Magistrate to that of another on the ground that they were magistrates presiding over the same court. But the learned Judge expressed no definite opinion on the point and *Emperor v. Harisandra* (2) is a direct authority to the contrary. We do not feel precluded from taking action under this view.

We have therefore simply to determine the meaning of the phrase "equal jurisdiction." The word "jurisdiction" is nowhere defined in the Criminal Procedure Code and it is one which is used in various senses. In Webster's 'Dictionary' it is thus defined: "The legal power or authority of hearing and determining causes; the power of executing the laws and distributing justice; the right by which Judges exercise their power; judicial authority over a cause; as, certain suits or actions, . . . are within the jurisdiction of a court, that is, within the limits of its authority or commission." Applying the above definition to the use of the term in the present connection we think we shall not be wrong in saying that two courts are of equal jurisdiction when they are empowered by law to entertain the same class of cases and dispose of them in the same way.

Now it is not denied that the powers of a Chief Presidency Magistrate are the same as those of an ordinary Presidency Magistrate both as to the entertainment and disposal of cases. Both are empowered to dispose of the same class of cases and to

(1) (1903) 13 M.L.J., 69.

(2) (1908) 10 Bom. L.R., 201.

inflict the same punishments. The procedure before both is identical and each has territorial jurisdiction over the whole Presidency Town. Appeals from both lie to the same court and under similar conditions.

Applying these considerations to the definition of jurisdiction above quoted, they seem to fully warrant us in holding the two courts to be of equal jurisdiction, and we do not think this conclusion is in any way affected by the arguments of the learned Crown Prosecutor directed to show that in certain particulars not affecting their ordinary jurisdiction in the sense above indicated the Presidency Magistrates are subordinate to the Chief Presidency Magistrate. The extent of the subordination of Presidency Magistrates to the Chief Presidency Magistrate is under section 21, clause (2) of the Criminal Procedure Code, to be defined by the Local Government. In Bombay it has been declared to be similar to that of Subordinate Magistrates to a District Magistrate under section 17 (1). But in this Presidency the defining order is G.O. No. 168, Judicial, dated 2nd February 1900; and it is somewhat noteworthy that although asked by the then Chief Presidency Magistrate to pass a similar order the Government of Madras directed that the subordination should be limited to the purposes of sections 124(1), 144 (4), 192 and 528, Criminal Procedure Code, not one of these can in our opinion be properly deemed to affect the jurisdiction of the Presidency Magistrates in the sense in which we understand the term. Section 528 alone might at first sight seem to do so; but the fact that the Chief Presidency Magistrate has the power to transfer a particular case of which a Presidency Magistrate has taken cognisance does not affect the primary jurisdiction of the latter, which is what should be looked to.

We may add that on general principles it is most natural and desirable that the High Court should possess the power of transferring a case from the file of the Chief Presidency Magistrate to that of a Presidency Magistrate. It is easy to conceive of circumstances under which it might be very undesirable for a Chief Presidency Magistrate to dispose of a case of which he had taken cognisance and if the power now in question does not exist, the only course open to the High Court would be to try the case itself or direct committal before itself—both cumbersome remedies quite unsuitable for certain classes of cases.

AYLING  
AND  
SPENCER, JJ.

*In re*  
VENKA-  
TESWARA  
SASTRI.

AYLING  
AND  
SPENCER, JJ.

*In re*  
VENKA-  
TESWARA  
SASTRI.

Again, the object of limiting the power of transfer is simply to prevent even the High Court from nullifying the provisions of law which secure that particular classes of cases shall be tried before different grades of Courts corresponding to the gravity of the offence involved. That is to say it was not contemplated that even this court should be authorised to empower a Third-class Magistrate to try an offence which, as the law enacts should be tried only by a Magistrate of the first or second class. A case like the present stands on an entirely different footing.

For the above reasons we hold that this court is authorised to transfer a case from the file of a Chief Presidency Magistrate to that of a Presidency Magistrate. We have dealt with the question at some length as it has been fully argued and the learned Crown Prosecutor has pressed for a ruling on the point.

On the merits of the case we do not feel called upon to interfere. It is not alleged that the Chief Presidency Magistrate on whose file the case now stands is prejudiced or unfitted to try it. All that is said is that he does not possess the amount of scholarship in Telugu and Sanskrit which is necessary to understand and interpret correctly without the aid of translation the books in respect of which the charge is lodged, and others to which it may be necessary to refer for comparison. The difficulty, such as it is, is one necessarily of common occurrence in a country like this with so many vernaculars and has to be overcome by the help of translations for the preparation of which in the present case there exist the best facilities. Even assuming that the Fourth Presidency Magistrate, from his knowledge of Telugu and Sanskrit would enjoy certain advantages in dealing with the case (which is the utmost that can be said) we do not think this circumstance warrants us in interfering with the discretion of the Chief Presidency Magistrate who has considered and refused the petitioner's request. The petition is dismissed.