

KATAMUTHU  
P.  
EMPEROR.

Sessions Court. The Sessions Judge now directed this reference to be made for the orders of the High Court.

The Public Prosecutor in support of the order of commitment.

ORDER.—No doubt the District Magistrate acted in ignorance of the order passed by the Sessions Judge, but that does not make the District Magistrate's order legal, if, under the recently enacted clause (4) of section 435, Code of Criminal Procedure, it was too late for him to act. Under that clause it was certainly not competent to the District Magistrate to entertain an application for the commitment being ordered when the Sessions Judge had refused such an order. The only question then is whether the District Magistrate could act *suo motu*. We must hold that he could not, for otherwise the salutary prohibition now enacted would be rendered nugatory. It could not have been intended that what the District Magistrate might not do on an application could yet be done by him by his dispensing with an application. The reason for the prohibition is the avoidance of a conflict between the orders of two District authorities having co-ordinate powers in the matter, and that reason applies equally to cases when they act *suo motu*. In this view the commitment that was made under the District Magistrate's order was invalid and we accordingly set it aside under section 215, Code of Criminal Procedure.

## APPELLATE CRIMINAL.

*Before Sir Arnold White, Chief Justice.*

SAMI AYYA (ACCUSED), PETITIONER,

*v.*

EMPEROR, RESPONDENT.\*

*Criminal Procedure Code—Act V of 1898, s. 423—Power to “reverse the finding and sentence”—Reversal by Deputy Magistrate of an order acquitting accused on a charge of theft—Validity.*

A Deputy Magistrate has no power, under section 423 of the Code of Criminal Procedure, to reverse an order acquitting an accused person of a charge of theft.

\* Criminal Revision Case No. 484 of 1902, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the judgment of S. Ramu Ayyar, First-class Magistrate of Pattukkottai Division, in Criminal Appeal No. 67 of 1902, presented against the findings and sentences of A. Mukti-chidambara Mudaliar, Stationary Second-class Magistrate of Pattukkottai, in Calendar Case No. 322 of 1902.

1902.  
December 10.

The words "reverse the finding and sentence" in clause 1 (b) of that section mean reverse the finding upon which a conviction is based, and do not empower the appellate tribunal (or at any rate an appellate tribunal other than the High Court) to reverse or set aside an acquittal.

*Queen-Empress v. Jahanulla*, (I.L.R., 23 Calc., 975), explained.

CHARGES of being members of an unlawful assembly, rioting, hurt and theft. The facts material to the point decided are set out in the judgment. The accused were convicted, by the Second-class Magistrate, on all the charges except that of theft. On this charge he acquitted them. The accused appealed against that conviction to the Deputy Magistrate, who committed them to the Sessions on a charge of dacoity. Against that order, first accused preferred this criminal revision petition.

*T. Rangachariar* for petitioner.

The Public Prosecutor for the Crown.

ORDER.—In this case the accused were charged with being members of an unlawful assembly, rioting, hurt and theft. The Second-class Magistrate acquitted them on the charge of theft on the ground that they had acted without dishonest intention. He convicted them on the other charges. The accused appealed. On appeal, the Deputy Magistrate was of opinion that on the facts as found by the Second-class Magistrate the offence of theft must be held to have been committed, and that the offence committed by the accused amounted to dacoity, and he committed them to Sessions.

One of the facts as found by the Second-class Magistrate was that the accused had acted without dishonest intention. The finding of the Deputy Magistrate, in the face of this, that the accused must be held to have committed theft, cannot possibly be supported. The Public Prosecutor, in fact, did not attempt to support it.

A further point taken on behalf of the accused was that it was not competent for the Deputy Magistrate to reverse the acquittal on the charge of theft. In effect, no doubt, the Deputy Magistrate reversed the acquittal on the ground of theft, since, so long as the acquittal on the charge of theft stood, a necessary ingredient of the offence of dacoity was wanting and a committal to Sessions on a charge of dacoity would have been clearly wrong.

I am of opinion that, under section 423, Criminal Procedure Code, the Deputy Magistrate had no power to reverse the acquittal on the charge of theft. It seems to me the words "reverse the finding and sentence" in clause 1 (b) mean reverse the finding upon

SAMU AYVA  
" .  
EMPEROR.

which a conviction is based, and do not empower the appellate tribunal (or at any rate an appellate tribunal other than the High Court) to reverse or set aside an acquittal. The case of *Queen-Empress v. Jahanulla* (1) to which my attention has been called by the Public Prosecutor is distinguishable on the ground that the appellate tribunal in that case (the High Court) was a tribunal which had jurisdiction to set aside an acquittal.

The order of the Deputy Magistrate must be set aside.

The Public Prosecutor has urged that the sentences are inadequate and has asked that, as a Court of Revision, I should enhance the sentences. The sentences are no doubt light, but I do not think they are so clearly inadequate as to call for the interference of this Court.

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## APPELLATE CRIMINAL.

*Before Sir Arnold White, Chief Justice.*

KARUPPANA SERVAGARAN AND ANOTHER, PETITIONERS,

v.

SINNA GOUNDEN AND ANOTHER, RESPONDENTS.\*

1902.  
December 10.

*Criminal Procedure Code—Act V of 1898, s. 195 (b)—Sanction for prosecution—  
Appeal against order according sanction—Disposal of appeal after expiration of  
six months from order according sanction—Application for extension of time—  
“Good cause.”*

Sanction was accorded for a prosecution, and an appeal was preferred against the order, which was not disposed of until after the expiration of six months from the date of the order. Upon an application being made for an extension of time for the prosecution of the accused:

*Held*, that good cause had been shown for the extension.

PETITION for an extension of time for the prosecution of the accused. Sanction was granted on 17th March 1902; an appeal was preferred by the accused against the order according sanction,

(1) I.L.R., 23 Cal., 975.

\* Criminal Miscellaneous Petition No. 227 of 1902, presented under section 195 of the Code of Criminal Procedure, praying the High Court to order extension of time for prosecution of the respondents, sanctioned by the order of G. Kothundaramanjulu Naidu, District Munsif of Udumalpet, dated 17th March 1902, passed in Civil Miscellaneous Petition No. 33 of 1902 (Original Suit No. 256 of 1901).