

APPELLATE CRIMINAL.

Before Mr. Justice Subrahmanya Ayyar and Mr. Justice Davies.

KALIMUTHU AND TWO OTHERS. ACCUSED,

v.

EMPEROR, RESPONDENT.*

1902.
December 8.

Criminal Procedure Code—Act V of 1898, s. 135 (4)—Refusal by Sessions Judge to commit for trial—Subsequent commitment by District Magistrate after taking up the case suo motu—Legality.

A Second-class Magistrate, after enquiring into a charge of murder, discharged the accused. A revision petition was then presented to the Sessions Judge, requesting that the accused might be committed for trial at the Sessions. The Sessions Judge dismissed the petition, holding that the Magistrate's reasons for discharging the accused were good. At a subsequent date, the District Magistrate took up the case *suo motu* and directed the commitment of the accused for trial at the Sessions Court on a charge of murder. On reference being made to the High Court for orders:

Held, that the commitment that was made under the District Magistrate's order was invalid and must be set aside. Under clause 4 of section 135 it was not competent to the District Magistrate to entertain an application for the commitment being ordered when the Sessions Judge had refused such an order. Nor could he act *suo motu*. The reason for the prohibition in the section was to avoid a conflict between the orders of two District authorities having co-ordinate powers, and that reason applied equally to cases in which the authorities acted *suo motu*.

COMMITMENT of accused for trial. The Second-class Magistrate of Mudukulattur held a preliminary enquiry in his Register Case No. 5 of 1901, with regard to the case of three persons who were charged with having committed murder. In the result, namely, on 24th February 1902, the Magistrate discharged the accused. On 3rd April 1902, the complainant filed a revision petition in the Sessions Court, requesting that Court to direct the committal of the accused to the Sessions, but the Sessions Judge dismissed the petition, holding that the Magistrate's reasons for discharging the accused were good. On 30th April 1902, the District Magistrate took up the case *suo motu* and, on 31st May 1902, directed the commitment of the accused for trial on a charge of murder at the

* Case referred No. 126 of 1902 (Criminal Revision Case No. 448 of 1902) for the orders of the High Court, under section 438 of the Code of Criminal Procedure, by C. G. Spencer, Sessions Judge of Madura, in his letter, dated 18th September 1902, No. 6008 of 24th September 1902.

KALAMUTHU
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.