

SECRETARY
OF STATE FOR
INDIA IN
COUNCIL
T.
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apportionment, will declare the apportionment in such mode as may be customary, so that the parties concerned may have an opportunity of knowing it, and of appealing therefrom to the Board if aggrieved by the apportionment. The proposed apportionment of the assessment by the Collector, and the sanction of the Board being both the result of *ex parte* proceedings, there is nothing anomalous in allowing a party affected thereby to appeal to the Board against the apportionment thus made. The Board of Revenue, therefore, did not act *ultra vires* in entertaining the appeals of the lessees and of the Zamindar against the apportionment of assessment which was declared by the Collector on the 19th January 1891, and in revising that apportionment.

In this view it becomes unnecessary to decide the other questions argued before us.

We therefore allow the appeal and dismiss the suit with costs throughout.

APPELLATE CRIMINAL.

*Before Mr. Justice Subramania Ayyar, Mr. Justice Davies and
Mr. Justice Benson.*

SEVAKOLANDAI, ACCUSED,

v.

AMMAYAN, COMPLAINANT. *

1902.

November 5,
6.

December 9,
12, 15.

Criminal Procedure Code—Act V of 1893, s. 528—Power of District or Sub-Divisional Magistrate to transfer a criminal case from the file of a Village Magistrate—Extent of power—Petty thefts triable under Regulation IV of 1821.

The jurisdiction which a District or Sub-Divisional Magistrate has, under section 528 of the Code of Criminal Procedure, to transfer a criminal case from the file of a Village Magistrate is limited to the cases (namely those relating to petty thefts) which a Village Magistrate is empowered by Regulation IV of 1821 to try and punish.

REFERENCE for orders. The letter of Reference set out the facts as follows :—

* (Criminal Revision Case No. 454 of 1902.) Case referred for the orders of the High Court under section 438 of the Code of Criminal Procedure by E. A. Blwin, District Magistrate of South Arcot, in his letter, dated 15th September 1902.

“One Ammayan presented a complaint of insult (triable under Regulation XI of 1816) against one Sivakolandai in the Court of the Village Magistrate of Alambadi, Chidambaram taluk. The accused in the case petitioned the Deputy Magistrate, Chidambaram division, for the transfer of the case to the file of any other Magistrate on the ground that the Village Magistrate was prejudiced against him. The Deputy Magistrate, after hearing both sides, ordered the transfer of the case to the file of the Stationary Sub-Magistrate of Chidambaram. Against this order a so-called appeal has been presented to this Court by the complainant.

“From the proceedings of the Deputy Magistrate, dated 16th July 1902, it appears that there is sufficient ground for the accused to fear that a fair and impartial trial cannot be had before the Village Magistrate. The point for consideration, however, is whether the Deputy Magistrate had the power under the Criminal Procedure Code to make the order he did. Under the old Code (Act X of 1882) it was held that no such power existed. Clause 4 of section 528 was newly introduced in the present Code and although the intention of the Legislature appears to have been to invest a superior Magistrate with power to transfer *any* case pending before a Village Magistrate (see statement of objects and reasons of the new Code printed as supplement to the *Fort St. George Gazette*, dated 16th November 1897), yet the wording of the clause, which refers only to Regulation IV of 1821 under which petty thefts are triable, seems to include cases triable by a Village Magistrate under Regulation XI of 1816. I think, therefore, that the Deputy Magistrate's order was *ultra vires*.

“Again, I feel considerable doubt whether I have any appellate power or power of interference in respect of a Sub-Divisional Magistrate's order directing the transfer of a case, for the District Magistrate and the Sub-Divisional Magistrate have co-ordinate jurisdiction under section 528, Criminal Procedure Code. I understand that the High Court decided the question in a similar case on or about 25th June last.”

The District Magistrate concluded by stating that he considered that it was a case in which transfer should be made.

The case came on in the first instance before the Chief Justice and Bhashyam Ayyangar, J., who delivered the following judgments:—

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SIR ARNOLD WHITE, C.J.—The question raised in this reference is whether under section 528 of the Code of Criminal Procedure a District or Sub-Divisional Magistrate has power to transfer any criminal case pending before a Village Magistrate or whether this power of transfer is limited to the case referred to in section 6 of Regulation IV of 1821, that is to say, petty thefts where the value of the property does not exceed one rupee.

Section 10 of Regulation XI of 1816 gave to heads of villages criminal jurisdiction “in cases of a trivial nature such as abusive language and inconsiderable assaults or affrays.” By section 6 of Regulation IV of 1821 the powers granted to heads of villages under the section above referred to are extended to the punishment of petty thefts not attended with aggravating circumstances nor committed by persons of notoriously bad character and when the value of the property stolen does not exceed one rupee.

Paragraph (4) of section 528 of the Code of Criminal Procedure was apparently introduced to meet the decision of this Court in *Madavarayachar v. Subba Rau*(1), where it was held that since a Village Munsif was not a Magistrate under the Criminal Procedure Code, a Joint Magistrate had no power under section 528, as it then stood, to transfer a case from a Village Munsif. The offence in the case of *Madavarayachar v. Subba Rau*(1), though this is not stated in the report, as in the reference now before us, was abusive language.

The amendment to section 528 is not happily worded. If the Legislature had adopted the phraseology of section 1 (2) (b) of the Code, viz., “Heads of villages in the Presidency of Fort St. George” no question could have arisen. The amending words in section 528 refer expressly to the Regulation of 1821 and do not refer to the Regulation of 1816. But having regard to the circumstances in which the amendment appears to have been made, viz., to meet a decision in general terms that a Joint Magistrate had no power to transfer any criminal case from a Village Magistrate, the intention of the Legislature seems obvious.

I cannot bring myself to believe that the Legislature intended to give a power of transfer when the case was theft of an article of the value of not more than one rupee and not to give this power in the case of the trivial offences referred to in section 10 of

Regulation XI of 1816. I can conceive no object for making this distinction. The question is can we give effect to the intention of the Legislature without unduly straining the words of section 528. I think we can. Under section 6 of the Regulation of 1821 the powers granted by the Regulation of 1816 to punish trivial offences "are hereby extended . . . to the punishment of petty thefts, etc." It seems to me that the effect of those words is that the provisions of the Regulation of 1816 with reference to criminal offences of a trivial nature are implicitly incorporated and re-enacted in the Regulation of 1821 and that the head of a village under Madras Regulation IV of 1821 has jurisdiction under that Regulation to deal with cases of petty theft, and also has jurisdiction both under that Regulation and under the Regulation of 1816 to deal with the trivial offences referred to in the earlier Regulation.

This being so I think it was competent for the Deputy Magistrate to make the order of transfer.

BHASHYAM AYYANGAR, J.—The question for decision in this case is whether, under section 528, Criminal Procedure Code, a Sub-Divisional Magistrate can withdraw from the head of a village, a case of "a trivial nature"—viz., "of abusive language"—and refer the same for trial to a Magistrate subordinate to him. The solution of the question depends upon the right construction of sub-section 4 of section 528, Criminal Procedure Code, which was introduced for the first time in the Code of 1898 and which runs as follows:—

"The head of a village under Madras Regulation IV of 1821 is a Magistrate for the purposes of this section."

If, as is invariably the case, in various enactments [e.g., section 50 of Act XXIV of 1859; section 6 of Act I of 1871; section 19, clause 16, of Act VII of 1870 (Court Fees); section 26 (explanation) of Act I of 1872 (Evidence Act)] including section 1 (2) (b) of the Criminal Procedure Code, the functionary in question had been referred to in the above clause as "the head of a village in the Presidency of Port St. George," no doubt could arise as to the power of a District Magistrate or a Sub-Divisional Magistrate to withdraw *any* case from the head of a village and refer it for trial to any other Magistrate or head of a village subordinate to him. The head of a village in this Presidency is empowered to act as a Magistrate and deal with "cases of a trivial nature, such as; abusive language, inconsiderable assaults or

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affrays," by section 10 of Regulation XI of 1816, and with cases of petty thefts by section 6 of Regulation IV of 1821. It will be noted that in sub-section 4 of section 528, Criminal Procedure Code, reference is made only to Regulation IV of 1821 and not to Regulation XI of 1816. If the object of the Legislature had been to empower District and Sub-Divisional Magistrates to transfer any case from the head of a village, it is unaccountable that it should have departed from the usual phrasology used in section 1 (2) (b) of the Criminal Procedure Code, and the various other enactments already referred to or that reference should have been made only to Regulation IV of 1821 instead of to both that and Regulation XI of 1816. The conclusion I have come to is that the power of transfer is limited to cases of "petty thefts" which are triable by heads of villages under Regulation IV of 1821 and does not extend to "cases of abusive language, and inconsiderable assaults and affrays" which are also triable by heads of villages but under Regulation XI of 1816.

The obvious and grammatical interpretation of sub-section 4 of section 528, Criminal Procedure Code, is that the head of a village acting under Madras Regulation IV of 1821 is a Magistrate for the purposes of section 528. I can see no reason for departing from this interpretation and, in my opinion, such interpretation leads to no absurd or incongruous results. It is by no means difficult—were it necessary to do so—to assign reasons why the Legislature, while conferring on District and Sub-Divisional Magistrates power to withdraw cases from the heads of villages, should have deliberately limited that power to cases of theft only. Cases dealt with by heads of villages under Regulation XI of 1816 are expressly of a trivial nature—a conviction in respect of which will in no case affect the character of the accused or subject him to any civil disability—and if it be one of "abusive language," it will, in the majority of cases, not amount to any offence under the Indian Penal Code. But the case of a theft, though it be a petty one, the value of the property stolen not exceeding one rupee, stands altogether on a different footing. It is a serious offence under the general criminal law and a conviction for such an offence will permanently affect the character of the accused and subject him also to certain civil disabilities. There is nothing said in the Code of Criminal Procedure as to the law which is to be applied to a case transferred from the head of a village to a Magistrate appointed

under the Code of Criminal Procedure. Under both the Regulations the head of a village may "on a verbal enquiry dismiss the parties" or "if the offence charged is proved to have been committed by the accused and is of a nature deserving of punishment, he may confine the accused in the village choultry for a time not exceeding 12 hours" or if he be of a low caste, "put him in the stocks for a time not exceeding 6 hours." There can, however, be little doubt that when the case is transferred to and tried by a Magistrate, it will have to be dealt with, by him, under the Indian Penal Code and the Code of Criminal Procedure and not under the provisions enacted in the Regulations. Cases of a trivial nature referred to in section 10 of Regulation XI of 1816 may not, in some cases, amount to an offence at all under the general criminal law and the Magistrate may therefore be unable to deal with the same under the Indian Penal Code and the Code of Criminal Procedure, whereas every case of theft under Regulation IV of 1821 can be dealt with by a Magistrate under the Indian Penal Code, and in some cases though the value of the property stolen may not be more than one rupee, the punishment which the head of a village can, under Regulation IV of 1821, inflict will be very inadequate and it will therefore be desirable to transfer the case to a Magistrate who can deal with it effectually under the Penal Code. It seems to me therefore by no means unlikely that the Legislature did not consider it advisable or necessary to empower District and Sub-Divisional Magistrates to withdraw, from heads of villages, "cases of a trivial nature" falling under Regulation XI of 1816 and deliberately limited the power to cases of theft falling under the later Regulation IV of 1821.

I am unable to adopt the view that inasmuch as the powers conferred upon heads of villages by clause (1) of section 10 of Regulation XI of 1816, to deal with and punish the offences therein referred to, have, by incorporation with section 6 of Regulation IV of 1821, been extended to the punishment of petty thefts under that section, the head of a village should now be regarded as acting under Regulation IV of 1821, not only when he deals with cases of petty theft but also when he deals with "cases of a trivial nature" mentioned in section 10 of the Regulation of 1816 and that therefore under section 528 (4) of the Criminal Procedure Code any case may be withdrawn from the head of a village. This view proceeds on the assumption that not only does

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section 6 of the later Regulation incorporate with it the portion in question of section 10 of the earlier Regulation, but that section 10 has in its entirety been consolidated with and that it has merged in section 6 of Regulation IV of 1821. The case of *Boden v. Smith*(1) in no way lends any support to this view. All that was held in that case was that assuming that the 8 & 9 Vict., cap. 21, was a "Local Act" and that as such the period of limitation applicable to suits thereunder would be the general period provided by 5 & 6 Vict., cap. 97, for suits under "Local Acts," yet that by reason of the incorporation generally in 8 & 9 Vict., of "all the provisions of any Act of Parliament relating to County Rates" (The County Rates Act 55 Geo. III, cap. 51), the shorter period prescribed by the 55 Geo. III should be held to apply to suits under the 8 & 9 Vict., cap. 21, and that as far as regards the period of limitation for actions under this statute the 5 & 6 Vict., cap. 97, must be taken to have been repealed.

If the correct view be that section 10 of Regulation XI of 1816 has become merged in section 6 of Regulation IV of 1821, the former must be taken to have been spent and now become obsolete and heads of villages should be regarded as acting under Regulation IV of 1821, not only when they deal with cases of petty theft, but also when they deal with "cases of a trivial nature, such as abusive language, inconsiderable assaults and affrays." In none of the Acts passed from time to time, ending with Act XI of 1901 repealing obsolete enactments, has the Indian Legislature adopted this view either with reference to section 10 of Regulation XI of 1816 or with reference to various other enactments on the Indian Statute-book, which have been applied to or incorporated with later enactments. If the Legislature were now to repeal section 6 of Regulation IV of 1821, could it be contended that heads of villages in this Presidency could not deal with "cases of a trivial nature" provided for by section 10 of the earlier Regulation? Section 10 of Regulation XI of 1816, notwithstanding its incorporation with section 6 of the later Regulation has continued and still continues to be in force as part of the earlier Regulation and if the Legislature were now to repeal this Regulation, heads of villages could no longer deal with offences of "a trivial nature" mentioned in section 10. But such repeal would not affect the

(1) 18 L.J.C.P., 121.

operation of section 6 of Regulation IV of 1821,—as regards petty thefts provided for therein—and this section would operate just as if the words of section 10 of the Regulation of 1816, defining the powers of heads of villages to deal with the trivial offences therein mentioned, and only those words had, without any reference to that section, been actually reproduced, written and printed in section 6 itself when it was passed [per Lord Denman, C.J., in *The Queen v. The Inhabitants of Brecon* (1).] Where the provisions of one statute are incorporated by reference in another,—a method which is frequently adopted in drafting statutes, to save labour and avoid repetition—the effect is not to repeal the former enactment by consolidating it with the latter, but only to extend its provisions, without actually reproducing the words therein to the new matters in the later enactment; and, should the Legislature afterwards repeal the earlier statute, the provisions thereof, which have been incorporated in the later enactment continue in force for the purposes of the later enactment notwithstanding such repeal [*Reg. v. Merionethshire* (2), *The Queen v. Smith* (3), see also section 4 of (India) Act XI of 1901].

As the case which was withdrawn by the Sub-Divisional Magistrate from the head of the village was one of “abusive language” and not “theft,” the order of the Sub-Divisional Magistrate should, in my opinion, be cancelled.

The case came on for further hearing before the Court constituted as above.

V. Krishnasami Ayyar for complainant.

V. C. Desikachariar for the accused.

JUDGMENT.—The question raised in this reference is whether a District or Sub-Divisional Magistrate has jurisdiction, under section 528, Criminal Procedure Code, to transfer any criminal case from the file of a Village Magistrate or whether the power of transfer is limited to the cases, viz., petty thefts which a Village Magistrate is empowered by Regulation IV of 1821 to try and punish.

We think that the power of transfer is limited to the latter class of cases.

(1) 15 Q.B. Rep., 813 at p. 816.

(2) 6 Q.B. Rep., 343.

(3) L.R., 8 Q.B., 146.

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Section 1 (2) (b) of the Code of Criminal Procedure enacts that, in the absence of any specific provision to the contrary, nothing in the Code shall apply to "heads of villages in the Presidency of Fort St. George," and prior to 1898 it was held by the Courts that the effect of these words was that the power of transfer vested in the District and Sub-Divisional Magistrates under section 528 did not extend to cases pending before Village Magistrates in this Presidency.

By Act V of 1898, section 528 was amended: sub-section 4 of the amended section is as follows:—

"The head of a village under Madras Regulation IV of 1821 is a Magistrate for the purposes of this section."

The expression "under Madras Regulation IV" is an elliptical one, and might grammatically mean either *appointed* under that Regulation or *acting*, that is, exercising powers under that Regulation. The Regulation, however, does not deal with the appointment of heads of villages, but merely gives them the same powers in regard to punishing petty thefts, which they already had under Regulation XI of 1816 "in cases of a trivial nature, such as abusive language and inconsiderable assaults and affrays." The clause therefore means "the head of a village acting in exercise of the powers conferred on him by Regulation IV of 1821." We do not think that it can properly be held that the provisions of Regulation XI of 1816 are implicitly incorporated and re-enacted in Regulation IV of 1821. If the Legislature had intended to give the power of transfer in the trivial cases punishable under Regulation XI of 1816, we think that that Regulation would have been specified in the section along with Regulation IV of 1821, or else the language of section 1 of the Code would have been followed and no reference to any particular Regulation would have been made.

The reference to Regulation IV was, we think, made advisedly for the purpose of limiting the power of transfer to cases punishable under that Regulation. There are many reasons why the Legislature may have thought such a limitation desirable. Theft—even petty theft—is a serious offence, punishable under the Penal Code with imprisonment for three years. A conviction for theft permanently affects the character of the accused and entails civil disabilities, and liability on a second conviction to greatly enhanced punishment. Conviction for the trivial offences triable

under Regulation XI of 1816 entails none of these consequences. It may, therefore, well have been thought that the power of transfer was necessary in the one class of cases though not in the other. However that may be, when the words of the enactment are plain in themselves and can reasonably be given effect to in their ordinary grammatical meaning, we think that they should be so interpreted.

We, therefore, hold that the Sub-Divisional Magistrate had no power to transfer the cases of insult pending before the Village Magistrate to the Stationary Sub-Magistrate of Chidambaram and we set-aside his order.

As, however, the transfer is on the merits advisable, we, in exercise of our powers under section 29 of the Letters Patent, transfer the case to the Sub-Magistrate specified in the Sub-Divisional Magistrate's order.

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APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Benson.

SRI RAJAH SOBHANADRI APPA RAO BAHADUR
(FIRST DEFENDANT), APPELLANT,

v.

SRI RAJAH VENKATANARASIMHA APPA RAO BAHADUR
AND OTHERS (PLAINTIFF AND DEFENDANTS NOS. 2 TO 17),

RESPONDENTS.*

1902.
August 18,
20,
September 9.

Land tenure—"Mokhassadars"—Distinction between outright grant subject to performance of services and grant of an office with remuneration from use of lands—Prima facie ownership—Burden of proof of right to eject or resist ejection.

The tenure known as "mokhassa" is one which is created by an assignment of a village or land to an individual either rent free or at a low quit-rent on condition of service.

Where the grantor of land on mokhassa tenure has made the grant as payment for services in lieu of money, *semble*, that he may discontinue the employment and, with it, the remuneration, and resume the subject-matter of the grant.

* Appeal No. 157 of 1900 presented against the decree of S. Gopalachariar, Subordinate Judge of Kistna at Masulipatam, in Original Suit No. 6 of 1899.