

APPELLATE CRIMINAL.

Before Mr. Justice Davies and Mr. Justice Bhashyam Ayyangar.

ARUMUGA TEGUNDAN AND ANOTHER, PETITIONERS.*

1902.
September 2.

Criminal Procedure Code—Act V of 1898, ss. 145, 526—Jurisdiction of High Court to transfer a case pending disposal under s. 145.

A case under section 145 of the Code of Criminal Procedure is a "criminal case," and the High Court has jurisdiction to transfer it, both under section 526 of the Code of Criminal Procedure and article 29 of the Letters Patent.

Re Pandurang Govind Pujari, (L.L.R., 25 Bom., 179), not followed.

TRANSFER petition. A Deputy Magistrate took proceedings with reference to the possession of certain land, under section 145 of the Code of Criminal Procedure, and passed an order for the issue of notice calling upon petitioner to appear and file a written statement. This order had been preceded by numerous others relating to the same piece of land. Petitioner applied for a transfer to the District Magistrate, who, though he stayed proceedings for the time being and issued notice, and expressed disapproval of the Deputy Magistrate's proceedings, ultimately dismissed the application on the ground that the allegations of bias and prejudice were insufficient. Petitioner presented this petition for a transfer to the High Court, when the question whether the High Court has jurisdiction to transfer a case under section 145 of the Code of Criminal Procedure was considered.

A. S. Balasubramania Ayyar for petitioners.

Acting Public Prosecutor for Crown.

JUDGMENT.—We have no doubt of our power to transfer this case under both section 526 of the Code of Criminal Procedure and clause 29 of the Letters Patent. If a case under section 145 of the Code of Criminal Procedure is not a "criminal case" it is difficult to conceive what it is. With all respect we are unable to agree with the decision of the Bombay High Court in *Re Pandurang Govind Pujari*(1). Upon the merits, we think, upon the facts stated by the Acting District Magistrate, that he ought to have made the transfer

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* Criminal Miscellaneous Petition No. 168 of 1902, for an order transferring Possession Case No. 3 of 1902 from the file of Ramacha Nedungadi, Sub-Divisional First-class Magistrate of Tanjore, to that of any other Magistrate in the district,

(1) L.L.R., 25 Bom., 179.