

The facts of this case appear from the following Order :—

Joseph Satya Nadar for the accused.

P. R. Grant for the Public Prosecutor.

Re PONNU-
SAMY
NADAN.

ORDER.—We agree with the District Magistrate's view that the Sub-Divisional Magistrate to whom the case was referred by the Sub-Magistrate was bound to dispose of the case himself and that he had no power to send the case back to the Sub-Magistrate for disposal. The provision in clause II of section 349 of the Criminal Procedure Code that the Magistrate to whom the proceedings are submitted may pass such order as he thinks fit, means when taken in conjunction with the words immediately proceeding, viz., "judgment" and "sentence" that he may pass such other final order disposing of the case as he may think fit. We set aside the conviction of the accused by the Sub-Magistrate and direct the Sub-Divisional Magistrate to dispose of the case himself.

SUNDARA
AYYAR AND
SPENCER, JJ.

APPELLATE CRIMINAL.

Before Mr. Justice Sundara Ayyar and Mr. Justice Spencer.

Re P. MUNEYYA (FIRST ACCUSED), PETITIONER.*

1911.
December
13.

Perjury—Sanction of prosecution for—Criminal Procedure Code (Act V of 1898),
sec. 195—Conditional sanction.

A sanction to prosecute for perjury given under section 195, Criminal Procedure Code, cannot be conditional.

PETITION under sections 435 and 439 of the Criminal Procedure Code praying the High Court to revise the order of A. GALLETTI, the first-class Sub-Divisional Magistrate of Bezwada, dated the 22nd day of March 1911, in Calendar Case No. 2 of 1911, according sanction to prosecute the petitioner herein under section 193 of the Indian Penal Code.

The facts of this case are stated in the following Order :—

The Public Prosecutor for the Government.

T. Prakasam for the petitioner.

ORDER.—The order of the Sub-Divisional Magistrate is absolutely illegal. He says "provided that Silam Ramudu's *alibi* which is supported by the Second Court witness Papanna

SUNDARA
AYYAR AND
SPENCER, JJ.

* Criminal Revision Case No. 548 of 1911 (Criminal Revision Petition No. 409 of 1911).

Re MUNEYIA,
 SUNDARA
 AYYAR AND
 SPENCES, JJ.

Narasimham is found on investigation to be true; I sanction the prosecution of Parala Muneyya and Lingam Appayya for the offence of perjury and of Sikkala Papayya for presumably abetting them". No sanction can be granted of a provisional character in case certain conditions are satisfied in the future. It was the duty of the Magistrate before granting sanction to satisfy himself that there was, at the time of the order, a *prima facie* case against the petitioners here.

We set aside the order.

APPELLATE CRIMINAL.

Before Mr. Justice Ayling.

1911.
 December
 6 and 15.

Re SUBBIAN SERVAI AND FIVE OTHERS (ACCUSED IN CALENDAR
 CASE No. 744 OF 1911 ON THE FILE OF THE SUB-
 MAGISTRATE OF PALNI).*

Theft of fish in irrigation tank—Fish, offence of theft of—dependent upon power of fish to leave the tank.

Although the capture of fish in an ordinary irrigation tank will not of itself amount to theft, yet if the water in the tank become so low as to permit the fish leaving the tank the offence may be committed.

Subba Reddi v. Munshoor Ali Saheb, [(1901) I.L.R., 24 Mad., 81], explained.

CASE referred for the orders of the High Court under section 438 of the Criminal Procedure Code (Act V of 1898) by J. R. HUGGINS, the Additional District Magistrate of Madura, in his letter, dated 16th September 1911.

The facts of this case appear from the following Order:—

P. R. Grant for the Public Prosecutor on behalf of the Government.

AYLING, J.

ORDER.—The accused were convicted of theft in removing fish from a Government irrigation tank. They pleaded guilty: but the District Magistrate relying on the ruling in the High Court Proceedings No. 663, dated 10th April 1880, has referred the case on the ground that the capture of fish in an ordinary irrigation tank does not amount to theft.

The ruling quoted, which has been followed in a later case, *Subba Reddi v. Munshoor Ali Saheb*(1), is authority for the

*Criminal Revision Case No. 588 of 1911 (Referred Case No. 120 of 1911).

(1) (1901) I.L.R., 24 Mad., 81.