

JEREMIAH  
v.  
VAS.  
BENSON, J.

In these circumstances I think the case is one in which a retrial may properly be ordered, or in which the court may properly call for evidence under section 428, Criminal Procedure Code, on the question in regard to which the Magistrate, in effect improperly refused to take the evidence which the prosecution attempted to adduce. The accused's counsel deprecates a new trial owing to the delay and expense involved, and, of the two courses, prefers that additional evidence should be called for. I also think this will be the most convenient course. I will therefore direct the Magistrate to take such further evidence in regard to the alleged publication of the libel as either party may adduce and certify the same to this Court as soon as conveniently may be.

This case again came on for hearing and upon perusing the grounds of appeal and the record of the evidence and proceedings before the Lower Court, the court delivered the following:—

BENSON, J.

JUDGMENT.—The additional evidence now recorded proves that the accused did publish the libel complained of. He is therefore clearly guilty of the offence charged. Looking to all the circumstances of the case as set forth in the Magistrate's judgment, I do not think the sentence of fine of Rs. 300 is excessive. I dismiss the appeal.

## APPELLATE CRIMINAL.

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

1911,  
November  
23.

*Re* N. PONNUSAMY NADAN and FIFTEEN OTHERS (ACCUSED IN  
CALENDAR CASE NO. 180 OF 1911 ON THE FILE OF THE SECOND CLASS  
STATIONARY SUB-MAGISTRATE OF KOILPATTI).\*

*Criminal Procedure Code (Act V of 1898), sec. 349,—‘shall pass such order as he thinks fit’, meaning of.*

The words ‘such order as he thinks fit’ in section 349, Criminal Procedure Code, do not empower the Superior Magistrate to send the case back to the Sub-Magistrate for disposal but only empower him to pass such final order disposing of the case as he may think fit.

CASE referred for the orders of the High Court, under section 438 of Code of Criminal Procedure (Act V of 1898), by H. F. W. GILLMAN, the District Magistrate of Tinnevely, in his letter, dated 14th September 1911.

\* Criminal Revision Case No. 557 of 1911 (and Referred Case No. 107 of 1911).

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).