

the High Court, he is not with reference to the delegated power necessarily subject to its appellate or revisional authority.

We are constrained to hold that the High Court has no power to revise the orders passed by the Magistrate in these cases.

We dismiss the petitions.

VINJARAGHA-
VALU PILLAI
v.

THEAGAROYA
CHETTI.

AYLING AND
SESHAGIRI
AYYAR, JJ.

APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Tyabji.

T. SRIRAMULU AND THREE OTHERS (ACCUSED NOS. 1 TO 4),
PETITIONERS,

1914,
August
11 and 25.

v.

K. VEERASALINGAM (COMPLAINANT), RESPONDENT. *

Autrefois acquit—Charge framed—Further inquiry ordered—Criminal Procedure Code (Act V of 1898), ss. 253 (2), 350 and 437.

Where a Magistrate framed charges against an accused person and was succeeded by another Magistrate who recommenced the case under section 350, Criminal Procedure Code, and upon examining the complainant, discharged the accused under section 253 (2), Criminal Procedure Code :

Held, that the accused was *autrefois acquit* and that no further inquiry could be held into the case.

Per AYLING, J.—Where the proceedings recommenced under section 350 are only an inquiry, they are recommenced as an inquiry; where they have developed into the trial stage they are recommenced as a trial, *i.e.*, proceedings in which a charge has been framed. The second Magistrate cannot ignore the charge framed by his predecessor; his order must be viewed as one of acquittal.

PETITIONS under sections 435 and 439, Criminal Procedure Code (Act V of 1898), praying the High Court to revise the order of E. B. ELWIN, the District Magistrate of Gōdāvari, in Criminal Revision Petition No. 2 of 1914, preferred against the judgment of H. R. BARDSWELL, the Joint Magistrate of Rajahmundry, in Calendar Case No. 109 of 1913.

In this case a complaint of defamation was made to Mr. Bardswell, Joint Magistrate of Rajahmundry, who took the case upon his file, heard the prosecution evidence and framed charges against the accused. Mr. Bardswell was then transferred

* *Criminal Revision Cases Nos. 106 and 151 of 1914 (Criminal Revision Petitions Nos. 98 and 128 of 1914.).*

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and his successor (Mr. Stewart commenced the case *de novo* under section 350, Criminal Procedure Code, examined the complainant and discharged the accused. Thereupon the complainant petitioned the District Magistrate to order under section 437, Criminal Procedure Code, a further enquiry into the charge. The accused contended before him that the order of discharge of Mr. Stewart having been passed subsequently to the framing of charges by Mr. Bardswell amounted to an acquittal and that he was *autrefois acquit* and further enquiry was barred. The District Magistrate held that Mr. Stewart having recommenced the trial had full power to discharge the accused and ordered further enquiry. The accused petitioned the High Court.

J. L. Rosario, T. Prakasam and B. Narasimha Rao for the petitioners.

E. R. Osborne, D. Appa Rao, N. S. Narasimhachariar and V. Ramadoss for the respondent.

C. Sidney Smith for the Public Prosecutor for the Crown.

AYLING, J.

AYLING, J.—We are asked to revise an order of the District Magistrate of Godavari which directs, under section 437 of the Criminal Procedure Code further enquiry into a case of defamation in which the Joint Magistrate of Rajahmundry, Mr. Stewart, had passed what purports to be an order of discharge under section 253 of the Criminal Procedure Code. Mr. Rosario on behalf of petitioners argues that Mr. Stewart's order was, in effect, an order of acquittal under section 258 of the Criminal Procedure Code. If this is so, the District Magistrate undoubtedly had no power to order further enquiry under section 437 and his order must be set aside as *ultra vires*.

The facts are these. The case against petitioners was first heard by Mr. Bardswell, Mr. Stewart's predecessor in office. He heard the prosecution witnesses and framed a charge under section 254 of the Criminal Procedure Code, to which petitioners pleaded not guilty. He was then transferred. Mr. Stewart recommenced the enquiry under section 350 of the Criminal Procedure Code, examined the complainant as prosecution witness No. 1, and then passed an order of discharge under section 253 (2).

Mr. Rosario contends that a charge having once been framed, it is not cancelled by reason of the re-commencement of enquiry and the only course open to Mr. Stewart was either to record an order of acquittal or to convict (*vide* section 258 of the Criminal Procedure Code).

The only question is whether the re-commencement of a "trial" under section 350 of the Criminal Procedure Code implies the cancellation of a charge framed by the first Magistrate. There appears to be no direct authority of this or any other High Court on the point though the Punjab Chief Court has considered a precisely similar case and arrived at the conclusion that the charge remains in force and the subsequent order must be treated as one of acquittal and not of discharge [vide *The Crown v. Natthu*(1)].

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The interpretation of section 350 is by no means free from doubt ; but on the whole I am inclined to agree with the view taken by the learned Judges of the Punjab Chief Court. The only object of the substantive portion of clause (1) of section 350 seems to be to leave it to the discretion of the Magistrate to either act on evidence recorded by his predecessor or to hear it over again for himself. The discretion is somewhat restricted by proviso (a) and proviso (b) gives the superior Courts special powers of interference. Subject to these provisos the discretion is absolute. It is not clear why this should involve the cancellation of the charge or the transformation of the proceedings from a "trial" back into an "enquiry." As far as this Court is concerned, it is settled law that the proceedings before a Magistrate in a warrant case under chapter XXI of the Criminal Procedure Code are only an "enquiry" until a charge is framed : and on a charge being framed become a trial (vide *Palaniandy Goundan v. Emperor*(2) and *Narayanasawmy Naidu v. Emperor*(3)). Bearing this distinction in mind it would seem to follow that where the proceedings re-commenced under section 350 are only an inquiry, they are re-commenced as an inquiry. Where they have developed into the trial stage they are re-commenced as a trial, i.e., a proceeding in which a charge has been framed. The second Magistrate cannot ignore the charge framed by his predecessor and his position is practically the same as that of his predecessor would have been if, after framing a charge, he had heard further cross-examination of the prosecution witnesses under section 256 (1) and, on a consideration thereof, become satisfied that the charge was not well founded. It may not be altogether out of place to refer to

(1) (1903) 38 Punjab Records (Criminal), 35. (2) (1909) I.L.R., 32 Mad., 218.
(3) (1909) I.L.R., 32 Mad., 220.

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Sadagopacharyar v. Ragavacharyar(1), wherein it was held that the re-commencement of an inquiry under section 350 did not cover a reference to the Police under section 202 of the Criminal Procedure Code. I do not press the analogy but it is consistent with this to hold that a Magistrate who re-commences an inquiry or trial does not thereby modify its nature or the stage at which it has arrived.

Mr. Stewart's order must in my opinion be viewed as order of acquittal and the District Magistrate's order for further inquiry must be set aside.

TYABJI, J.

TYABJI, J.—Section 350 (1) of the Criminal Procedure Code provides for the re-summoning and re-hearing of the witnesses and the re-commencement of the inquiry or trial by the Magistrate who succeeds after his predecessor has already heard the evidence. The section is silent on the question whether or not on such re-hearing any charge that may have been already framed after the first hearing must subsist. In purporting to interpret section 350 therefore we have really to decide what would have been provided in the section had the point been explicitly dealt with. It does not appear that the point can be considered to have been dealt with by some necessary implication in that which is expressly laid down. On the other hand, if it is assumed in this connection that the charge already framed should be considered to be wiped out, the assumption involves that the Legislature has also overlooked the point that the succeeding Magistrate ought in that case to be empowered to frame a fresh charge or to adopt the charge already framed with or without alterations.

I am not prepared to say therefore that the interpretation put upon the section by the Chief Court of the Punjab is not the most reasonable one.

The petitioners ought therefore to have been acquitted instead of being discharged and the District Magistrate had no power to order further inquiry. His order to that effect must consequently be set aside.

(1) (1885) I.L.R., 96 Mad., 282.