

Re ROSARIO QUADROS. 9th October 1912, to play in petitioner's band for one year. They received an advance of Rs. 15 and Rs. 10 and bound themselves to go with the petitioner to any place at which he might have an engagement, to play in his band.

The counter-petitioners admitted the contract and receipt of the money and agreed to perform the work in accordance with the contract and were accordingly ordered by the Second Class Magistrate "to perform the labour according to the terms of the contract from tomorrow." The contract would have terminated on the 8th October 1913.

The District Magistrate referred the case to the High Court. None represented the accused.

The Public Prosecutor for the Crown.

MILLER, J.

ORDER.—A Musician in a band is clearly not an artificer or labourer, and is not, I think, a workman within the meaning of the Act (Act XIII of 1859). I agree with the District Magistrate and set aside the order of the Magistrate.

APPELLATE CRIMINAL.

Before Mr. Justice Miller.

1913. *Re K. SELLANDI, ACCUSED IN SESSIONS CASE NO. 54 OF 1913 ON*
 November 20. *THE FILE OF THE SESSIONS COURT OF SALEM (PUBLIC REPORTS CASE*
 No. 11 OF 1913 ON THE FILE OF THE STATIONARY
 SUB-MAGISTRATE OF SALEM).*

Criminal Procedure Code (Act V of 1898), sec. 348—Indian Penal Code (Act XLV of 1860), chaps. XII and XVII—Procedure of Magistrate who cannot adequately punish.

In this case the accused who had been previously convicted of an offence under section 394, Indian Penal Code, was charged before a Sub-Magistrate with an offence under section 411, Indian Penal Code. The Sub-Magistrate tried and convicted him of the offence and ordered his commitment to the Court of Sessions for the purpose of awarding him enhanced punishment.

Held, that the conviction and commitment were illegal. The correct procedure to be followed in such a case is for the Magistrate either as a preliminary matter or before framing a charge to determine whether he has power to pass a sufficient sentence. If he thinks he has not such power he should frame a charge and commit the accused.

CASE referred for the orders of the High Court under section 438, Criminal Procedure Code (Act V of 1898), by J. T.

* Referred Case No. 94 of 1913 (Criminal Revision Case No. 670 of 1913).

GILLESPIE, the Sessions Judge of Salem, in his letter, dated 13th October 1913, No. 5313. *Re SELLANDI.*

The facts of this case are stated in the order below.

The Public Prosecutor for the Crown.

The accused was not represented.

ORDER,—In this case the Magistrate has found the accused *MILLER, J.* guilty, and then committed him to the Court of Sessions under section 348, Criminal Procedure Code. The effect of the conviction would seem to be that section 403, Criminal Procedure Code, would bar the trial by the Court of Sessions.

It is not entirely easy to deal satisfactorily with cases under section 348. The Magistrate is bound to commit if there has been a previous conviction of one of the offences described unless he can adequately punish the accused; consequently he must either as a preliminary matter or at any rate before framing a charge determine whether there has been a previous conviction; having decided that point, he will have to consider whether in the circumstances of the case his powers enable him to pass sufficiently severe sentence. If he thinks they do so permit, he may either commit the accused for trial or try him himself: if they do not so permit, but the evidence does not warrant the discharge of the accused, he must frame a charge under section 210 of the Code and commit him for trial under chapter XVIII.

In the present case I set aside the conviction and direct the Magistrate to frame a charge under section 210 and commit the accused for trial before the Court of Sessions.

APPELLATE CIVIL.

Before Mr. Justice Miller.

ANNASAMI SASTRIAL AND FOUR OTHERS (DEFENDANTS),
PETITIONERS,

v.

A. S. RAMASAMI SASTRIAL AND TWO OTHERS (PLAINTIFFS),
RESPONDENTS.*

1913.
November
27.

Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 38—Suit for money for maintenance under an agreement, cognisable by a Small Cause Court.

A suit to recover from the defendant paddy expended by the plaintiff for the maintenance of their grand-mother, for which under the agreement of partition