

VARADARAJA  
MUDALI  
v  
MURUGESAN  
PILLAI.

or application will lie even though a former suit or application of a similar nature was decided on an erroneous *view of the law* between the same parties.]

I would, in the result, dismiss the appeal with costs.

NAPIER, J.

NAPIER, J.—I agree.

S.V.

## APPELLATE CRIMINAL.

*Before Mr. Justice Tyabji and Mr. Justice Phillips.*

1915.  
August 26.

Re SUBBARAYA CHETTI (ACCUSED IN CALENDAR CASE No. 242 OF 1915 ON THE FILE OF R. SARANGAPANI, THE STATIONARY SECOND-CLASS MAGISTRATE OF PALLADAM).\*

*Criminal Procedure Code (Act V of 1898), ss. 110 and 167—Proceedings under section 110—Power to remand under section 167.*

In proceedings under section 110 of the Code of Criminal Procedure (Act V of 1898) the Magistrate has no power to remand an accused person to custody. Section 167 of the Code applies to proceedings under Chapter XIV and not to those under section 110.

*Emperor v. Basya (1903) 5 Bom. L.R., 27, referred to.*

CASE referred by A. R. CUMMING, the District Magistrate of Coimbatore, for orders of the High Court under section 438, Criminal Procedure Code (Act V of 1898).

Facts appear from the following letter of reference:—

“I have the honour to submit the following case for the orders of the High Court under section 438, Criminal Procedure Code:—

“One Subbaraya Chetti aged twenty years was arrested on suspicion by the police at Dharapuram on the 30th of March 1915 with a view to his being put up before the Sub-Divisional Magistrate, Erode, for being bound over to be of good behaviour under section 11, Criminal Procedure Code. On the 31st of the month the accused was produced before the Stationary Sub-Magistrate, Dharapuram, with a request that he should be remanded for four days for production before the Sub-Divisional Magistrate, Erode. The Stationary Sub-Magistrate accordingly remanded him till 3rd April 1915. On the afternoon of the same day, the Sub-Inspector of Police reported

\* Criminal Revision Case No. 440 of 1915 (Referred Case No. 46 of 1915).

to the Sub-Divisional Magistrate, Erode, through the Stationary Sub-Magistrate, Dharapuram, that witnesses from various parts had to be summoned to identify the accused and requested therefore that he should be remanded for ten days and retained in the sub-jail at Dharapuram instead of being taken to Erode. This report was received by the Stationary Sub-Magistrate at 4-30 P.M. and he remanded the accused accordingly in anticipation of orders and reported the fact to the Sub-Divisional Magistrate, Erode, for approval.

Re  
SUBBARAYA  
CHETTI.

“On the 10th April the accused and one Annappillai who was also under remand in connection with a riot case were handed over to the police with orders to produce them before the Sub-Divisional Magistrate, Erode, on the 12th. On the morning of the 11th the two escorting constables and the two accused arrived at Tiruppur on their way to Erode, and took their meals in a hotel. When the constables were settling their accounts, etc., with the hotel-keeper the accused Subbaraya Chetti bolted. One of the constables pursued him but was not able to arrest him.

“About midnight on 11th April 1915 two constables of the Tiruppur station who were going on patrol duty saw some carts on the road, and suspecting that the accused of whose escape from custody they had already heard might be in one of them, started examining each cart. Just then a man jumped out of one of the carriages and ran away. The constables ran after him and arrested him and finding him to be the absconding accused, produced him before the officer in charge of the Police station at Tiruppur who charged the accused with an offence under section 225-B, Indian Penal Code, before the Stationary Sub-Magistrate, Palladam. The Stationary Sub-Magistrate found him guilty of the offence and sentenced him to rigorous imprisonment for six months on 21st May 1915 and committed him to the Central Jail, Coimbatore.

“Proceedings under section 110 (f), Criminal Procedure Code, were subsequently taken against Subbaraya Chetti and one Govinda Chetti and the Sub-Divisional Magistrate, Erode, bound them over to be of good behaviour for one year and ordered them each to execute bonds in Rs. 100 with one surety for similar sum.

“I doubt the legality of the conviction of Subbaraya Chetti by the Stationary Sub-Magistrate, Palladam, for the following reasons:—

(i) The Stationary Sub-Magistrate, Dharapuram, had no power to remand the accused to custody and keep him in the sub-jail as a

Re  
SUBBARAYA  
CHETTI.

prisoner with a view to proceedings being taken against him under section 110, Criminal Procedure Code.

(ii) The remand and therefore the custody being illegal, the escape from custody was not illegal and so not an offence under section 225-B, Indian Penal Code, and consider that it should be set aside.

"Pending final orders of the High Court I have ordered the release of the accused on bail.

"The records of the cases are submitted duly indexed."

*M. H. Hakeem* for the Public Prosecutor for the Crown.

The accused did not appear either in person or by pleader.

The following Order of the Court was delivered by

TYABJI  
AND  
PHILLIPS, JJ.

TYABJI, J.—The Magistrate's Court had no power to remand the accused. Section 167 of the Criminal Procedure Code applies to proceedings under Chapter XIV and not to those under section 110: *Emperor v. Basya*(1). The conviction is therefore set aside and the bail bonds cancelled.

S.V.

## APPELLATE CIVIL.

*Before Mr. Justice Spencer and Mr. Justice Coutts Trotter.*

KARRI RAMAYYA AND OTHERS (DEFENDANTS NOS. 4 AND 5),

APPELLANTS,

v.

VILLOORI JAGANNADHAN AND NINE OTHERS (PLAINTIFFS AND DEFENDANTS NOS. 1, 3 AND 6 TO 11), RESPONDENTS.\*

(*Madras Proprietary Estates Village-service Act (II of 1894), ss. 5 and 10, cl. (2)*—Service inam—Emoluments, partition of, whether prohibited—Alienation, validity of—Subsequent suit for ejectment—Transfer of Property Act (IV of 1882), sec. 43—Ancestral property—Property inherited by maternal grandsons—Interests, nature of.

The enfranchisement of a service inam under section 10, clause (2) of the (*Madras Proprietary Estates Village-service Act (II of 1894)*) does not destroy the rights of any member of a joint family who has a hereditary interest in it.

The alienation of a service inam is void and though it is subsequently enfranchised, the alienee cannot invoke the aid of section 43 of the Transfer of Property Act in his favour.