APPELLATE CRIMINAL.

Before Mr. Justice Kumaraswami Sastriyar.

1915. April 15 and 20.

VELLAYANAMBALAM (COMPLAINANT), PETITIONER,

v.

SOLAI SERVAI AND ANOTHER (ACCUSED), RESPONDENTS.*

Criminal Procedure Code (Act V of 1898), ss. 439, 422 and 423—Order of acquittal—Revision petition to the High Court by private parties—Power of High Court to interfere—Interference, in what cases—Service of notice of appeal on District Magistrate—Omission of service, effect of—Irregularity.

The High Court has power to interfere in revision against an order of acquittal on the application of private parties, but will do so only when it considers that interference is urgently demanded in the interest of public justice.

The High Court will not interfere with an order of acquittal where the question is one as to the appreciation of evidence or where there is no patent error or defect in the order which has resulted in grave injustice.

Mere omission to serve notice of appeal on the District Magistrate, under sections 422 and 423 of the Code of Criminal Procedure, is only an irregularity and will not render the proceedings *ab initio* void.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of J. W. GLASSON, the First-class Magistrate (Joint Magistrate) of Dindigul Division, in Criminal Appeal No. 52 of 1914, preferred against the judgment of N. SUNDARAM AYYAR, the Stationary Second-class Magistrate of Nilakottai, in Calendar Case No. 144 of 1914.

M. O. Parthasarathy Ayyangar and *C. Rajagopala Ayyangar* for *R. Sadagopa Achariyar* for the petitioner.

K. S. Jayarama Ayyar for the respondents.

P. R. Grant for *the Public Prosecutor* for the crown.

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ORDER.—This is an application to revise the order of the Joint First-class Magistrate of Dindigul Division reversing the conviction and sentence passed by the Stationary Second-class Magistrate of Nilakottai in Calendar Case No. 144 of 1914.

The complainant filed a complaint against the two accused, who are the present counter-petitioners, charging them with offences under sections 352 and 426 of the Indian Penal Code and section 24 of Act I of 1871 (Cattle Trespass Act). The Stationary

* Criminal Revision Case No. 660 of 1914. (Criminal Revision Petition No. 558 of 1914.)

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Sub-Magistrate fined each of the accused Rs. 15 for each of the offences and directed them to pay Rs. 5-4-0 as costs to the complainant. An appeal was preferred and Mr. GLASSON, the Joint Magistrate of Dindigul Division, reversed the conviction after going through the evidence and material papers, as he was of opinion that the case was not proved.

A preliminary objection has been taken by Mr. Jayarama Ayyar for the respondents that no Criminal Revision Petition lies to set aside an order of acquittal and that the only remedy in such cases is an appeal by the Government as provided for by section 417 of the Criminal Procedure Code. It has been argued that a private person has no *locus standi* in such cases and reference has been made to *Thandavan* v. *Perianna*(1) and *In re Sinnu Goundan*(2). The right of a private party to prefer a revision petition against an order of acquittal and the circumstances under which the High Court would interfere, if at all, have been considered in numerous cases. In *Thandavan* v. *Perianna*(1) it was held that an appeal against an order of acquittal by way of revision was not contemplated by the Criminal Procedure Code and their Lordships refused to hear the petitioner's counsel. The observations of MILLER, J., in *In re Sinnu Goundan*(2), to the effect that to entertain proceedings by way of revision where an appeal would lie from an acquittal under section 417 of the Code of Criminal Procedure is contrary to the spirit if not to the letter of sub-section (5) of section 439 of the Code of Criminal Procedure, also support the view taken in *Thandavan* v. *Perianna*(1). There are, however, numerous cases where the High Court has held that it has power to interfere in revision although the powers were exercised within very narrow limits. I need only refer to *Sukho* v. *Durga*(3), *Queen Empress* v. *Ala Baksh*(4), *In the matter of Aminuddin*(5), *Emperor* v. *Madar Bakhsh*(6), *Heerabai* v. *Framji Bhikaji*(7), *In re the Municipal Committee of Dacca* v. *Hingoo Raj*(8), *The Deputy Legal Remembrancer* v. *Kuruna Baistobi*(9), *Rupa Mandal* v. *Keshab Mandal*(10), *Bellew* v. *Mrs. Parker*(11), *Rakhal Das Roy* v. *Kailash Banu*(12), *Kangali Sardar* v. *Rama Charan*

(1) (1891) I.L.R., 14 Mad., 363.
(2) (1914) 26 M.L.J., 160.
(3) (1880) I.L.R., 2 All., 448.
(4) (1884) I.L.R., 6 All., 484.
(5) (1902) I.L.R., 24 All., 346.
(6) (1903) I.L.R., 25 All., 128.
(7) (1891) I.L.R., 15 Bom., 349.
(8) (1882) I.L.R., 8 Calc., 895.
(9) (1895) I.L.R., 22 Calc., 164.
(10) (1907) 5 C.L.J., 452.
(11) (1903) 7 C.W.N., 521.
(12) (1910) 11 C.L.J., 113.

Bhattacharjee(1), *Ramjiwan Rai* v. *Abilakh Barai*(2) and *Shaikh Bagu* v. *Raika Singh*(3).

The view taken by the Allahabad High Court in *Sukho* v. *Durga*(4) and *Queen Empress* v. *Ala Baksh*(5) was that the Court would not interfere on facts but only on questions of law apparent from the record. In *Heerabai* v. *Framji Bhikaji*(6), their Lordships observed that though the High Court has power to review an order of acquittal under section 439 of the Code of Criminal Procedure yet it would not ordinarily interfere with such an order in the exercise of its revisional jurisdiction, because an appeal can always be made by the Local Government against such an order under section 417 of the Code and that it is open to the complainant to move the Government if so advised to appeal against the order. Though in some cases above referred to, the Calcutta High Court went further than the other Courts as to the extent of the scope of interference in such cases, the decision of the CHIEF JUSTICE and Justice FLETCHER in *Faujdar* v. *Kasi Choudhisri*(7) is to the effect that the power should be exercised only sparingly and when urgently demanded in the interests of public justice. I entirely agree with the remarks of JENKINS, C.J., in the above case, and, while I am not prepared to hold that there is no power for the High Court to interfere in revision, I am of opinion that the applications by private parties ought to be discouraged and that the Court should only interfere when it considers that interference is urgently demanded in the interests of public justice. It seems to me that the Court should not interfere with an order of acquittal where the question is one as to the appreciation of evidence or where there is no patent error or defect in the order of acquittal passed by the lower Court which has resulted in grave injustice. The mere fact that the High Court, if it was sitting as a Court of Appeal would have come to a different conclusion on facts, is no ground for exercising revisional jurisdiction in petitions against orders of acquittal.

Turning to the merits the chief ground urged before me is that notice did not go to the District Magistrate as required by the Criminal Procedure Code and rules of criminal practice and

(1) (1911) I.L.R., 38 Calc., 786. (2) (1913) 18 C.W.N., 584.
(3) (1914) 18 C.W.N., 1244. (4) (1880) I.L.R., 2 All., 448.
(5) (1884) I.L.R., 6 All., 484. (6) (1891) I.L.R., 15 Bom., 349.
(7) (1914) 19 C.W.N., 184.

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that consequently the reversal of the judgment of the Second-class Magistrate by the Joint Magistrate was erroneous. A report was called for as to the alleged want of notice to the District Magistrate and it appears that although notice was ordered by the Joint Magistrate when he admitted the appeal, no notice was, as a matter of fact, served on the District Magistrate. The case has been argued on both sides on the footing that notice did not go. Section 422 of the Code of Criminal Procedure enacts that, if the Appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the Local Government may appoint in this behalf: and section 423 of the Code of Criminal Procedure directs that the appeal shall be disposed of after hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears. The practice in all these cases is for the notice of appeal to be served on the District Magistrate and for the District Magistrate to instruct the Public Prosecutor to appear if, in his opinion, the case is a fit one for the Public Prosecutor to appear and argue in support of the conviction. It very often happens that the District Magistrate does not think it worth while to instruct the Public Prosecutor to appear. There can be no doubt that the action of the Joint Magistrate in hearing the appeal when no notice was, as a matter of fact, served on the District Magistrate, is irregular, having regard to the provisions of sections 422 and 423 of the Code of Criminal Procedure. I don't think that the mere omission to serve notice of appeal on the District Magistrate is anything more than an irregularity and do not agree with the arguments of the petitioner's counsel that the proceedings are *ab initio* void.

Mr. P. R. Grant, who appeared for the Public Prosecutor, states that he has no instructions to urge for a reversal on the ground that the District Magistrate had no notice and I must take it that so far as this case is concerned, the District Magistrate does not consider that the interests of justice have suffered owing to his not having received notice of the appeal.

I have gone through the records and do not think that any grounds exist for the exercise of the revisional powers of the High Court.

The petition fails and is dismissed.

K.R.