APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Napier.

1916. March 30 and April 5.

Re SAVARIMUTHU PILLAI AND TWO OTHERS (ACCUSED).*

Criminal Procedure Code (Act V of 1898), sec. 367—Transfer of a Magistrate who has written but not delivered judgment—Demand for a new trial before successor under section 350 of Criminal Procedure Code—Legality of order granting new trial—Successor not bound to pronounce his predecessor's judgment.

A Magistrate who had tried a case wrote a judgment, dated and signed it on the day fixed for judgment. Owing to the absence of one of the accused he did not pronounce it on that day, but adjourned the case to a later date. In the meanwhile the Magistrate was transferred to another station and succeeded by another Magistrate, before whom all the accused demanded on the adjourned date a *de novo* trial.

On a reference under section 438, Criminal Procedure Code,

Held, that the action of the new Magistrate in according a *de novo* trial under section 350, Criminal Procedure Code, was not illegal and that he was not bound to deliver his predecessor's written judgment.

Obiter: In the absence of a demand for a new trial it would be in the discretion of the successor to date, sign and pronounce his predecessor's judgment.

Quaere: Whether it is legal for him to pronounce his predecessor's judgment in the face of a demand for a new trial.

In re Sankara Pillai (1908) 18 M.L.J., 197, considered.

CASE referred for the orders of the High Court under section 438 of the Code of Criminal Procedure (Act V of 1898), by G. F. PADDISON, the District Magistrate of Madura, in his letter R.O.C. No. 53/Magisterial of 10th February 1916, in Calendar Case No. 716 of 1915.

A. Venkatarayalayya for the second accused.

The Public Prosecutor for the Crown.

The necessary facts of the case appear from the judgment of AYLING, J.

AYLING, J. AYLING, J.—This case (Calendar Case No. 716 of 1915), on the file of the Second-class Magistrate of Dindigul, was tried by Mr. D. K. VENKATESWARA AYYAR who heard all the evidence and adjourned it to 30th November 1915 for judgment. He also wrote and signed a judgment, adding the date (30th November 1915), but did not pronounce it as, when the case was called on 30th November 1915, one of the three accused was absent. The case was therefore adjourned to secure the attendance of this man. On 8th December 1915 all the accused appeared;

* Criminal Revision Case No. 160 of 1916 (Referred Case No. 19 of 1916).

but by that time Mr. VENKATESWARA AYYAR had been succeeded by Mr. N. SUBRAHMANYA AYYAR. The accused then demanded a *de novo* inquiry under section 350 of the Criminal Procedure Code, and Mr. SUBRAHMANYA AYYAR apparently feeling doubts as to whether he could in such circumstances be justified in pronouncing his predecessor's judgment, acceded to their demand.

The District Magistrate refers the case under section 438 of the Criminal Procedure Code on the ground that Mr. SUBRAHMANYA AYYAR was bound to pronounce his predecessor's judgment and recommends that he should be ordered to do so, and that his order for a *de novo* trial should be set aside.

It seems to me that the District Magistrate has taken a wrong view of the law: and that the Sub-Magistrate was acting legally in deciding to hold a *de novo* trial. It was held by a bench of this Court in *In re Sankara Pillai*(1), construing section 367 of the Criminal Procedure Code that a Magistrate did not act illegally in dating, signing and pronouncing in open Court a judgment which had been written by his predecessor who had heard all the evidence. But there is nothing to indicate that the learned Judges held it to be obligatory on him to do so; the question of how far his discretion would be fettered by the provisions of section 350 of the Criminal Procedure Code was not considered at all.

Sections 366 and 367 of the Criminal Procedure Code read together require that a judgment shall be (1) written, (2) signed, (3) dated and (4) pronounced in open Court—the latter three must take place on the same occasion. Till all these formalities have been gone through the judgment is not delivered; and there is nothing to prevent the officer who wrote it from tearing it up and writing another. In this sense, it is incomplete.

The fact that the first Magistrate went so far as to sign and date the judgment he had written is immaterial: seeing that he did not pronounce it. Section 367 requires the dating and signing to be in open Court at the time of pronouncement. The Second Magistrate was therefore in exactly the same position on 8th December 1915, as if he held in his hands a judgment which had been simply written and left behind by his predecessor. In the absence of any demand for a *de novo* trial it would have been in his discretion to date, sign and pronounce this

(1) (1908) 18 M.L.J., 197.

Re SAVARI MUTHU-PILLAI.

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judgment. Whether it would have been legal for him to do so in the face of a demand for a *de novo* trial seems to me very doubtful; but that question need not be decided: that he was not bound to deliver his predecessor's judgment I am quite clear whether the accused demanded a *de novo* trial or not.

Whatever action he takes must be under section 350 (1) which leaves it to his discretion. There is no specific provision in the Criminal Procedure Code corresponding to Order XX, rule 2, of the Code of Civil Procedure, under which it might be argued that the Second Judge was merely the mouth-piece of the first. A Magistrate who pronounces a judgment of his predecessor must in my opinion be taken to adopt it as his own. He cannot be compelled to do this.

In my opinion there is no ground for interference and the records should be returned to the District Magistrate.

NAPIER, J.

NAPIER, J.—I agree.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Moore.

1916. January 25.

PONNIATHA KATHOOT PARAMESWARAN MUNPEE AND FOUR OTHERS (COUNTER-PETITIONERS), PETITIONERS,

v.

MOOTHEDATH MALLISSERI ILLATH NARAYANAN NAMBODRI AND ANOTHER (PETITIONER), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), sec. 92—Suit under, nature of—Death of plaintiffs—Power of Court to add parties.

A suit brought under section 92 of the Code of Civil Procedure is a representative suit and the Court has power under Order I, rule 10, clause (2) of the Code, to add persons as additional parties whose presence may be necessary in order to enable the Court effectually and completely to adjudicate upon the questions involved in the suit.

Varadayya Chetty v. *Munusami Chetty* (1911) 10 M.L.T., 514, followed.

Chhabile Ram v. *Durga Prasad* (1915) I L.R., 37 All., 296, dissented from.

PETITION under section 115 of the Civil Procedure Code (Act V of 1908) praying the High Court to revise the order of A. NARAYANAN NAMBIYAR, the acting District Judge of North Malabar, in Civil Miscellaneous Petition No. 646 of 1915, in Original Suit No. 21 of 1914.

* Civil Revision Petition No. 984 of 1915.