

## APPELLATE CRIMINAL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

THE SESSIONS JUDGE OF COIMBATORE, PETITIONER  
(REFERRING OFFICER),

v.

MURAPPA GOUNDAN (ACCUSED).\*

1918.  
July, 18.

*Criminal Procedure Code (Act V of 1898), sec. 436—Indian Penal Code (Act XLV of 1860), sections 323, 354, 376, 511—Subordinate Magistrate taking cognizance on police charge-sheet—No mention of offence under sections 376, 511, Indian Penal Code—Prosecution not pressing for committal before Magistrate—Order by District Magistrate directing committal—Validity of order—Reference by Sessions Judge—Quashing of commitment by High Court—Jurisdiction of District Magistrate.*

Where a Subordinate Magistrate took cognizance of a case on a police charge-sheet charging the accused with offences of assault and hurt under sections 354 and 323, Indian Penal Code, but no charge was made therein of the offence of attempt to rape, under sections 376 and 511, Indian Penal Code, and the prosecution did not press for the framing by the Magistrate of a charge in respect of that offence, but the District Magistrate purporting to act under section 436, Criminal Procedure Code, directed the Subordinate Magistrate to commit the accused to the Sessions for an offence under sections 376 and 511, Indian Penal Code, and the accused was so committed :

*Held* (on a reference by the Sessions Judge), that the proceedings of the Subordinate Magistrate did not amount to an order of discharge on the major offence and the District Magistrate had no jurisdiction to pass an order under section 436 of the Criminal Procedure Code directing the Subordinate Magistrate to commit the accused to the Sessions for the offence under sections 376 and 511, Indian Penal Code. Commitment quashed and the Subordinate Magistrate directed to proceed with the trial of the minor offences. *Krishna Reddi v. Subbamma* (1901) I.L.R., 24 Mad., 136 (F.B.), distinguished.

CRIMINAL MISCELLANEOUS PETITION to the High Court by D. G. WALLER, the Sessions Judge of Coimbatore, in his letter D. No. 3230, dated 3rd April 1918, to quash the commitment in Sessions Case No. 21 of 1918 on the file of the Sessions Court of Coimbatore (P.R. No. 2 of 1918 on the file of the Court of the Sub-Magistrate of Mēttupālaiyam).

The material facts are set out in the Sessions Judge's Reference which was as follows :—

“ I have the honour to submit to the High Court under section 215, Criminal Procedure Code, the records in Sessions Case No. 21 of

\* Criminal Miscellaneous Petition No. 141 of 1918.

1918 on the file of this Court, with a recommendation that the commitment be quashed. The material facts are briefly these:—

2. A complaint of attempted rape was made by the husband of the complainant to the monegar of his village. It was reported to the police, who made an investigation and charge-sheeted the accused under sections 354 and 323, Indian Penal Code. The Sub-Magistrate of Mēttupālaiyam recorded the prosecution evidence and proceeded, without any objection on the part of the police or of complainant's counsel, to frame charges against the accused under these sections. Two days later, complainant moved the District Magistrate under section 435, Criminal Procedure Code, to revise the Sub-Magistrate's 'order' and to direct the commitment of accused for an offence under sections 376 and 511, Indian Penal Code. The District Magistrate, after hearing both parties, directed the Magistrate to commit accused on a charge framed under sections 376 and 511, Indian Penal Code, holding that the Magistrate's order 'was equivalent to the discharge of the accused so far as the offence of an attempt at rape' was concerned. The Magistrate accordingly committed accused to this Court as directed.

3. The District Magistrate relied on the ruling in *Krishna Reddi v. Subbamma*(1). Counsel for accused contends that this ruling is not applicable to the facts of the present case. As I understand the decision, I think that he is right. In this case, the police charge-sheeted accused under sections 354 and 323, Indian Penal Code, and there was no application by complainant or any one else for a charge of attempted rape. In that case, on the other hand, there was an application by the prosecution for a charge under section 477, Indian Penal Code, which the Magistrate formally refused and his refusal was held to be tantamount to an order of discharge.

4. In this case no order has, it seems to me, been passed that the District Magistrate was empowered to revise. Complainant should have applied to the Sub-Magistrate under section 347, Criminal Procedure Code, to commit the case as one of attempted rape and on his refusing to do so, there would have been a proper basis for an application to the District Magistrate in revision. It cannot, I submit, be asserted in this case, as it could in *Krishna Reddi v. Subbamma*(1) that the Sub-Magistrate had 'adjudicated upon the question whether there was any evidence against the accused in respect of the major offence.' For the latter had not been charge-sheeted for the major offence and no one had asked that he should be charged with it.

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5. I recommend, therefore, that the commitment be quashed both on the law and on the facts. The accused was charge-sheeted for offences which the Sub-Magistrate could try and no one suggested before him that he should convert the charge into one of a major offence exclusively triable by a Court of Session. There can consequently be no question of a discharge under section 209(1), Criminal Procedure Code, within the meaning of the decision relied on by the District Magistrate."

The Public Prosecutor (*H. R. Osborne*) on behalf of the Crown.

The Hon. Mr. *T. Richmond* for the accused.

The Court passed the following ORDER:—

SADASIVA  
AYYAR, J.

SADASIVA AYYAR, J.—The decision in *Krishna Reddi v. Subbamma*(1) goes only to this extent that where the prosecution had pressed for the framing of a charge of a higher offence triable by the Sessions Court, even if the Subordinate Magistrate had originally taken cognizance only of a charge relating to a lesser offence, the refusal of the Magistrate to frame the charge for the higher offence might be treated as an order of discharge in respect of that offence and that section 436 of the Criminal Procedure Code would, in those circumstances, give the District Magistrate jurisdiction to direct the Subordinate Magistrate to commit the accused to the Sessions on the graver charge.

In the present case, the offence of attempt at rape was not mentioned in the police charge-sheet on which the Subordinate Magistrate took cognizance of the case and the prosecution did not press for the framing by that Magistrate of a charge against the accused in respect of that offence.

The Sessions Judge was, therefore, justified in holding that the decision in *Krishna Reddi v. Subbamma*(1) could not be extended so as to cover this case and we accordingly accept the Reference. Quashing the commitment, we direct the Subordinate Magistrate of Mēttupālaiyam to proceed with the trial of the charges for the minor offences framed by him against the accused.

K.R.

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(1) (1901) I.L.R., 24 Mad., 136 (F.B.).