

is decreed, but only compensation for *menchilavu* not received in the past to which plaintiff has been held to be entitled. This claim to *menchilavu* must be treated as on the same footing as a claim to past maintenance for which undoubtedly a decree could be given. [Vide *Valiya Konikal Edom Kalu v. Lakshmi Nattiar Ammal*(1) and *Govindan Nair v. Kunju Nair* (2)].

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PHILLIPS, J.

The Second Appeal and memorandum of objections are both dismissed with costs.

N.R.

## APPELLATE CRIMINAL.

*Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.*

GANAPATHY CHETTY AND ANOTHER (ACCUSED), PETITIONERS,

1919,  
April, 14.

v.

REX.\*

*Criminal Procedure Code (Act V of 1898), ss. 177 to 187, 526 and 531—Murder committed outside Madras—Inquiry by Chief Presidency Magistrate and commitment to High Court Sessions—Jurisdiction of Magistrate—Original Criminal Jurisdiction of High Court—Letters Patent, cl. 24—Jurisdiction, whether conferrable under section 526, Criminal Procedure Code.*

The petitioners were charged before the Chief Presidency Magistrate of Madras with having kidnapped a child from his guardian in Madras, with having stolen his jewels from him in Madras and with having taken him out of the city to a place within the jurisdiction of the Sessions Judge of Chingleput and there murdered him. The Chief Presidency Magistrate, after inquiry, committed the petitioners to the High Court Sessions on the abovesaid charges.

On an application to the High Court on its appellate side to set aside the commitment so far as the charge of murder was concerned on the grounds that (a) the Magistrate had no local jurisdiction to inquire into the case, and (b) the High Court had no local jurisdiction to try the charge of murder :

*Held* (i) that the irregularity or illegality, if any, in the Magistrate's proceedings was cured by section 531, Criminal Procedure Code, (ii) that, even if the High Court had no jurisdiction on its Original Side to try the case, an order could be made under section 526, Criminal Procedure Code, directing the trial at the High Court Sessions. Ordered accordingly.

*Semle.*—The High Court has power under clause 24 of the Letters Patent in the exercise of its original criminal jurisdiction to try persons for offences committed outside the City of Madras.

\* Criminal Miscellaneous Petition No. 159 of 1919.

(1) (1919) M.W.N., 379.

(2) (1919) 36 M.L.J., 565.

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*Queen-Empress v. James Ingle* (1892) I.L.R., 18 Bom., 200, and *Queen-Empress v. Ram Dei* (1896) I.L.R., 18 All., 387, referred to; *Assistant Sessions Judge of North Arcot v. Ramammal* (1913) I.L.R., 36 Madras, 387, distinguished.

PETITION under sections 215 and 439 of the Code of Criminal Procedure, 1898, and section 107 of the Government of India Act, praying the High Court will be pleased to quash the order of commitment passed by J. C. ADAM, Esq., the Chief Presidency Magistrate, dated the 20th day of March 1919, in Calendar Case No. 4556 of 1919 (Sessions Case No. 8 of 1919 on the file of the High Court).

*K. W. Luke* for the first (accused) petitioner.

*C. Kunhiraman* for the second (accused) petitioner.

*The Crown Prosecutor (C. Sidney Smith)* on behalf of the Crown.

SADASIVA  
AYYAR, J.

SADASIVA AYYAR, J.—This is an application praying to quash the order of commitment passed by the Chief Presidency Magistrate in Calendar Case No. 4556 of 1919. The commitment was made to the High Court Sessions. The application is made under sections 215 and 439 of the Criminal Procedure Code and section 107 of the Government of India Act. The offences with which the petitioners are charged relate to acts of kidnaping and theft committed in Madras and the offence of murder committed on the Avadi-Poonamallee Road within the jurisdiction of the Sessions Court of Chingleput. They all formed parts of the same transaction.

So far as the objection based on the alleged want of jurisdiction of the Chief Presidency Magistrate over the offences which took place on the Avadi-Poonamallee Road are concerned, that defect, assuming it to exist, is clearly cured by section 581, Criminal Procedure Code.

Then there is the more serious question, that is, the commitment having been made to this High Court Sessions as regards the offence which took place in the Chingleput district whether the High Court has got power in the exercise of its original criminal jurisdiction to try that offence and whether even if it has not the defect is cured by section 581 or 582. I think the policy of the Criminal Procedure Code as shown by sections 581 to 588 is to uphold in most cases the orders passed by the Criminal Court which was lacking in local jurisdiction or which

had committed illegalities or irregularities unless failure of justice has been occasioned or is likely to be occasioned through such want of jurisdiction or such illegalities or irregularities. However there is a decision of this Court in *Assistant Sessions Judge of North Arcot v. Ramammal*(1) to which my learned brother was a party and which holds that if the Sessions Court to which a commitment was made had no local jurisdiction over the place where the offence took place such commitment should be quashed (though of course after the trial had taken place to its termination section 531 might cure the defect). It is unnecessary for me to express any final opinion whether the decision in *Queen-Empress v. Ram Dei*(2) which seems to be opposed to the decision in *Assistant Sessions Judge of North Arcot v. Ramammal* (1) does not take the better view. I shall, therefore, proceed on the footing that, in the matter before us, *Assistant Sessions Judge of North Arcot v. Ramammal*(1) should be followed.

The next question is whether the High Court in its original criminal jurisdiction has power to try a case of murder committed in the Chingleput district. In *Queen-Empress v. James Ingle*(3), which was a case almost similar to the present, Mr. Robertson for the prosecution contended that under the Letters Patent the High Court had criminal jurisdiction to try cases arising throughout the Presidency. Clause 24 of the Letters Patent of this Court says that the

"High Court of Judicature at Madras shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the said High Court."

It is objected that the High Court Sessions will then be flooded with commitments if it is held to have the original criminal jurisdiction over the whole Presidency. I think that it was to prevent that inconvenience that section 206, clause (2), was enacted prohibiting Magistrates from committing to the High Court where they could commit to a Sessions Court. In the above-quoted case in *Queen-Empress v. James Ingle*(3) Mr. Justice FARRAN refused to quash the commitment made wrongly to the Bombay High Court Sessions evidently accepting the

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(1) (1913) I.L.R., 38 Mad., 387. (2) (1896) I.L.R., 18 All., 358.

(3) (1892) I.L.R., 16 Bom., 200.

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contention of Mr. Robertson already referred to. The present case is therefore not a case of want of jurisdiction in the Court to which the commitment was made and can therefore be distinguished from the case decided in *Assistant Sessions Judge of North Arcot v. Ramammal*(1).

Assuming again that the High Court in its original criminal jurisdiction has no power in the usual course to try this case, I think this is a matter in which we should exercise the power given to us by section 526, clause (1), sub-clause (1), for reasons (d) and (e) of the Criminal Procedure Code and pass an order that the offences committed outside the jurisdiction of Madras be also tried in the High Court Criminal Sessions along with other offences which were committed in Madras. If that power is exercised the trial before the Madras Sessions becomes legal and it then becomes unnecessary to decide the other questions I would therefore pass that order and dismiss this petition.

SPENCER, J.

SPENCER, J.—I agree.

So far as the proceedings in the Presidency Magistrate's Court are concerned, section 531, Criminal Procedure Code, is sufficient authority for our refusing to set aside the order of commitment. This section, however, cannot be invoked as regards the proceedings in the High Court Sessions, for the trial of this case has not yet been taken up in the High Court Sessions and therefore so far there are no proceedings in the Sessions Court requiring to be cured.

Section 177, the effect of which was considered in *Assistant Sessions Judge of North Arcot v. Ramammal*(1) to which I was a party, declares that

“every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.”

The question, therefore, now for our consideration is whether the trial can be allowed to proceed in this Court or whether so far as the offence of murder is concerned the case should be tried by the Sessions Judge of Chingleput, who appears so far as the facts are before us to have jurisdiction over that offence committed at Poonamallee just outside the Madras City in the Chingleput district. On the question of convenience there can

(1) (1913) I.L.R., 36 Mad., 387.

be no doubt that it will be convenient for the case to be tried where the witnesses are assembled; the case is ready for trial; and the offences of kidnapping and theft have in any case to be tried in Madras unless an order of transfer is made. I do not think it can be suggested seriously that the accused would be prejudiced by being tried by a jury and by losing his right of appeal if convicted. Having regard to clause 24 of the Letters Patent it cannot be said that the Judge presiding over the High Court Sessions has no power to try persons brought before him on charges preferred by any Magistrate. This case in that respect differs from the case in *Assistant Sessions Judge of North Arcot v. Ramammal*(1), in which the Sessions Judge of North Arcot, to whom the commitment was made, had no power to try an offence arising out of the local limits of the Salem district. Under section 526, clause (1), sub-clause (1), the High Court is empowered to make a direction

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“that an offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive) but in other respects competent to inquire into or try such offence”

in cases where such order is expedient for the ends of justice. I therefore agree with my learned brother that that is the order we should make in this case and that it will be expedient for the ends of justice that all the charges be tried together against the accused at the High Court Sessions.

K.R.

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(1) (1913) I.L.R., 36 Mad., 387.