

which was declared illegal by the old Act—see clause 2, CORPORATION OF MADRAS section 262.] U.

• This is a penal section, and it must be construed in favour of the subject. The matter is at the best left in doubt, and the judgment ought to stand.

The JUDGMENT of the Court was delivered by

SADASIVA AYYAR, J.—We are quite clear that this section 262 of the Madras City Municipal Act, 1904, read with section 420 of the Act was intended to reproduce section 264 of the old Act (The City of Madras Municipal Act, 1884) which made the new construction of an inflammable pandal or the continuance of an existing pandal, etc., of that character an offence. The pandal in question is clearly unlawful and there is no written permission of the President to legalize it. We think that the language of section 420 (of the Madras City Municipal Act, 1904) ‘whoever contravenes’ is wide enough to cover an owner and occupier of premises which offends against the section.

We set aside the acquittal and impose a fine on the defendant of Rs. 5 (five rupees).

SADASIVA
AYYAR, J.

K.R.

APPELLATE CRIMINAL.

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

In re PYDI RAMANNA AND 5 OTHERS (ACCUSED), PETITIONERS.*
CRIMINAL PROCEDURE CODE (Act V of 1898) Sec. 517—*Confiscation of property found with a vagrant ordered to give security under sections 109 (b) and 118—Validity of order of confiscation—‘Enquiry’ in section 517, whether includes ‘Inquiry’ under section 117.*

1918,
July 22.

Under section 517, Criminal Procedure Code (Act V of 1898), a Court can order confiscation not only of property which has been used for the commission of an offence or regarding which an offence has been committed but also of any other property which has been produced before it.

A proceeding under section 117, Criminal Procedure Code, is an ‘enquiry’ within section 517.

In re Govindaraja Padayachi (1919) 31 I.C., 827 and *Jagannathan v. Varadaraja Mudaliar* (Criminal Revision Case No. 570 of 1915 unreported) dissented from. *Rassul Bibee v. Ahmed Moosajee* (1907) I.L.R., 34 Calc., 347, followed.

CRIMINAL REVISION Case called for by the High Court on perusal of the order of H. A. B. VERNON, District Magistrate of Vizagapatam, in Criminal Appeal No. 5 of 1917, against the

* Criminal Revision Case No. 209 of 1918.

In re PUDI
RAMANNA.

judgment of S. H. SLATER, Joint Magistrate of Vizianagram, in Criminal Miscellaneous Case No. 4 of 1917.

The Public Prosecutor, for the Crown.

Facts are stated in the judgment of SADASIVA AYYAR, J.

SADASIVA
Ayyar, J.

SADASIVA AYYAR, J.—This is a case taken up in revision by AYLING, J., on a perusal of the calendar. These persons were put up by the police before the Joint Magistrate of Vizianagram in order that the Magistrate might take proceedings against them under section 109, Criminal Procedure Code, requiring them to execute bonds with sureties for their good behaviour. Now under section 109 security can be required either on the ground that a person is taking precautions to conceal his presence and is taking such precautions with a view to committing an offence or on the ground that a person has no ostensible means of subsistence, or cannot give a satisfactory account of himself. Then section 110 provides that certain specially qualified Magistrates may require the execution of a similar bond with sureties for good behaviour if a person is by habit a robber, house-breaker or thief or a receiver of stolen property by habit and so on. Now the Joint Magistrate has passed his order not under section 110 but under section 109 on the ground that these six persons had no ostensible means of subsistence and could not give a satisfactory account of themselves; that is under clause (b) of section 109. Then he further passed an order confiscating Rs. 211 found with the third accused (the word 'accused' being used in a loose sense so as to include persons called upon to furnish security), Rs. 260 found with the fourth accused and Rs. 213 found with the sixth accused besides keys, ornaments and cloths found with the fourth and fifth accused. (The Joint Magistrate does not mention the provision of law under which he passed the order of confiscation.)

As section 118 of the Criminal Procedure Code under which orders are passed in proceedings taken under sections 107 to 110 is preceded by section 117 which provides for an enquiry into the truth of the information on which an order is to be passed, I take it that the order of confiscation was passed under section 517, clause (1). That section is as follows :

"When an enquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any property or document produced before it or in its custody or

regarding which any offence appears to have been committed or which has been used for the commission of any offence."

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RAMANNA.

SADASIVA
AYYAR, J.

*There can be no doubt that the property with reference to which the confiscation order was passed was property produced before a Criminal Court (that is the Joint Magistrate), that there was an enquiry in the said Criminal Court under section 117, Criminal Procedure Code, and that the Joint Magistrate had therefore jurisdiction to pass the order for the disposal of the property because it was produced before him though there may be no proof that any offence had been committed with reference to that property even if the word 'property' by the explanation to the same section included other property which had been converted into the property produced before the Court. In this connexion I might refer to the case in *In re Govindaraja Padayachi*(1) in which a Bench of this Court (ABDUR RAHIM AND AYLING, JJ.), held that under section 517, clause (1), the Criminal Court has power to pass confiscation orders only in respect of property regarding which an offence appears to have been committed and that the Court cannot pass such orders on the mere fact that the property had been produced before the Court in an inquiry. No doubt under the corresponding section 517 of the Act of 1882 the words 'regarding which any offence appears to have been committed' qualify the words 'produced before it.' But the words 'or in its custody' and the word 'or' again have been introduced in the later Code of 1898 before the word 'regarding' and as pointed out in *Rassul Bibee v. Ahmed Moosajee*(2), this alteration clearly extended the powers of the Criminal Court to make orders about the disposal of all property produced before it in enquiry even without an expression of opinion on the part of the Court that any offence appeared to have been committed regarding it. I therefore respectfully dissent from the decision in *In re Govindaraja Padayachi*(1). * * * * *

NAPIER, J.—This case taken up by the High Court arises out of proceedings taken by the Joint Magistrate of Vizianagram under section 109, Criminal Procedure Code. He made an order under that section against certain persons to execute bonds with

NAPIER, J.

(1) (1915) 31 I.C., 827.

(2) (1907) I.L.R., 34 Cal., 347.

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sureties for good behaviour and also made an order for confiscation of cash and pieces of broken jewellery and cloths found in their possession. The persons against whom the order was made appealed to the District Magistrate who upheld both the orders and they themselves have not applied to us in revision, but the propriety or correctness of the order as to confiscation was doubted by a Judge of this Court and has been put before us for disposal. The order must have been, I think, made under section 517. I had at first doubts whether proceedings under the preventive sections of the Code come within what is an enquiry or trial in the sections. But, as has been pointed out by my learned brother, such proceedings are called an enquiry in those sections and therefore the section cannot be limited to preliminary enquiries before Magistrates. I would therefore hold that orders can be made in enquiries under the preventive sections.

The next question is whether section 517 covers property which has come before the Court in the circumstances of this case. It has been held by a Bench of this Court in *Jagannathan v. Varadaraja Mudaliar*(1) that orders can be passed in an enquiry under the preventive sections but that the order cannot be passed unless it has been shown that the property with regard to which the order is made is such that an offence appears to have been committed with respect to it or that it has been used for the commission of an offence. With respect to the learned Judges who decided that case, I think that they had overlooked the language of the present Code. The same view was taken in a case in *Surentranath Sarma v. Rai Mohan Das*(2) and that case was relied on in a subsequent case in *Rassul Bibee v. Ahmed Moosajee*(3). The learned Judges in the latter case point out that the Bench which decided *Surentranath Sarma v. Rai Mohan Das*(2) had overlooked the amendment of the Code; and with great respect, this is what the learned Judges who decided the case above referred to in our Court seem to me to have done. The language of the old Code was, as pointed out by my learned brother, limited to property in respect of which an offence appears to have been committed or which has been used for the commission of an offence; whereas the language of the

(1) Cr.L.R.C. No. 570 of 1915 (unreported). (2) (1903) I.L.R., 30 Cal., 690.
(3) (1907) I.L.R., 34 Cal., 347.

present Code is quite clear and extends the mischief of the section to any property produced before the Court or in its custody. Differing therefore with the decision in *Jagannathan v. Varadaraja Mudaliar*(1), I am of opinion that there is power in Courts acting under the preventive sections to make an order with regard to a property which has been produced before it. * * * *

In re PYDI
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N.R.

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Krishnan.

CHAVADI RAMASWAMI PILLAI (PETITIONER), APPELLANT,

1918
July 23.

v.

E. VENKATESWARA AIYAR, AND THE OFFICIAL RECEIVER,
TINNEVELLY (RESPONDENTS), RESPONDENTS.*

Provincial Insolvency Act (III of 1907), ss. 45 and 46—Appeal, time for—Limitation Act, applicability of—Period of limitation, commencement of—General principles—General Clauses Act (X of 1897), ss. 9 and 10, applicability of—Ninetieth day, dies non—Exclusion of.

In computing the time for preferring an appeal to the High Court under section 46 of the Provincial Insolvency Act (III of 1907) though the general provisions of the Indian Limitation Act do not apply, the period of ninety days specified in section 45 of the Act should be reckoned from the date of the order appealed against; and thereupon the general principles contained in section 9 of the General Clauses Act (X of 1897) should be applied and the day on which the order appealed against is passed should be excluded.

Further, under section 10 of the General Clauses Act, the ninetieth day, if it be a *dies non*, must be excluded.

APPEAL against the order of A. EDGINGTON, the District Judge of Tinnevelly, in Original Petition No. 627 of 1916.

The material facts appear from the judgment.

T. M. Ramaswami Ayyar for the appellant.

K. S. Sankara Ayyar for the respondent.

The JUDGMENT of the Court was delivered by

SPENCER, J.—It is argued that these appeals are barred by limitation on the ground that as the general provisions of the Limitation Act have been held not to apply to appeals under section 46 of the Provincial Insolvency Act, the date upon which the order appealed against was made, and the Sunday upon

(1) CrL. R.C. No. 570 of 1915.

* Appeal against Order No. 197 of 1917.