

## APPELLATE CRIMINAL.

*Before Mr. Justice Oldfield and Mr. Justice Ramesam.*

KOTTUR HAMPANNA AND TWELVE OTHERS, ACCUSED.\*

1922,  
September 6.

*Criminal Procedure Code (Act V of 1898), sec. 346—Sub-Magistrate—Submitting a case—Sub-Divisional Magistrate—Returning the case—Jurisdiction.*

When a Sub-Magistrate submits a case to a Sub-Divisional Magistrate under section 346, Criminal Procedure Code, the latter has no power to return the case to the former but is bound to dispose of it in one of the ways prescribed by that section.

CASE referred for the orders of the High Court by D. G. WALLER, Sessions Judge, Bellary.

The facts of the case are set out in the Judgment.

*The Public Prosecutor* for the Crown.

The JUDGMENT of the Court was delivered by

OLDFIELD, J.

OLDFIELD, J.—The Sessions Judge, Bellary, has referred a committal by the Sub-Magistrate, Adōni, in Preliminary Register No. 6 of 1921 as illegal in the following circumstances. The case apparently was charged in the first instance before the Sub-Magistrate under section 395, Indian Penal Code. When the evidence was taken the Sub-Magistrate entertained some doubt as to whether that section applied or whether the proper sections were not sections 148 and 427, Indian Penal Code. He therefore submitted the case to the First-class Sub-Divisional Magistrate under section 346, Criminal Procedure Code, he apparently not being a Magistrate of the first class competent to try an offence under section 148, Indian Penal Code. The Sub-Divisional Magistrate returned the records to him with an order, of which we may at once and quite apart from the legal objection to it, express our strong disapproval.

\* Criminal Miscellaneous Petition No. 220 of 1922.

The order runs as follows:—"The Sub-Divisional Magistrate declines to transfer the case to the file of another Sub-Magistrate." This is a distinct point into which we need not enter. He then, however, says, "As regards the section under which the offence, if proved, is likely to fall, the Sub-Magistrate is requested to study the commentary carefully under section 379 of the Indian Penal Code." This sort of elusive advice to a Sub-Magistrate from a superior is worse than useless; and moreover, by returning the case for disposal to him the Sub-Divisional Magistrate failed in his own plain duty. For, under section 346, Criminal Procedure Code, the duty of the Sub-Divisional Magistrate is clearly stated as being

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"either, if so empowered, to try the case referred to him himself or to refer it to any Magistrate subordinate to him having jurisdiction, or to commit the accused for trial."

It may be urged that the Sub-Magistrate, who sent up the case, was subordinate to the Sub-Divisional Magistrate and that this order was in effect a reference to him. If so, the reference should have been made explicitly and with some distinct indication of what action the Sub-Magistrate was to take, not with an obscure injunction, which could afford no real guidance. But further, there is authority, with which we respectfully agree, in *Queen-Empress v. Fakira*(1) and *Queen-Empress v. Purshotam*(2), that a superior Magistrate cannot simply return a case to the subordinate Magistrate, from whom it comes, but must refer it to some other Magistrate or dispose of it himself.

In these circumstances, the committal by the Sub-Magistrate must be held illegal, inasmuch as his jurisdiction was determined when he submitted the case under

(1) (1890) Ratanlal's Unreported Cases, 499.

(2) (1891) Ratanlal's Unreported Cases, 554.

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section 346, Criminal Procedure Code, and was not revived by the subsequent order of return to him.

We cannot part with the case without inviting the District Magistrate's attention to the fact that the inquiry began on 2nd July 1921 and that the accused were committed for trial only on 15th March 1922. A small portion of this long pendency is, no doubt, due to a change in Magistrates, apparently between the hearings of 13th February 1922 and 2nd March 1922, but practically no part of it need be ascribed to the reference to the Sub-Divisional Magistrate under section 346, Criminal Procedure Code. The numerous hearings, which were tolerated, seem to have been due to bad posting, and to the failure to secure the presence of witnesses and to take their evidence, when they were present, without substantial adjournments. We hope that the District Magistrate will give his attention to these unfortunate proceedings.

The record is returned. The case must go to the First-class Sub-Divisional Magistrate in order that he may deal with it in any one of the ways permitted by section 346, Criminal Procedure Code, either by trying himself or committing the accused for trial or, if he thinks fit, by referring it to any Magistrate subordinate to him having jurisdiction, that is, as we understand it, jurisdiction to try the offence which, in the opinion of the Magistrate making a reference under section 346, Criminal Procedure Code, appears to have been committed.

K.U.L.