

## APPELLATE CRIMINAL.

*Before Sir William Ayling, Kt., Officiating Chief  
Justice and Mr. Justice Krishnaswami Rao.*

MAHAGANAM VENKATRAYAR, PETITIONER (COMPLAINANT),

1921,  
July 21.

v.

KODI VENKATRAYAR AND FOUR OTHERS (RESPONDENTS),  
ACCUSED.\*

*Criminal Procedure Code (V of 1898), sec. 250—Complaint  
frivolous or vexatious—Magistrate trying accused for lesser  
offence whether acting illegally—Compensation.*

When a Magistrate tries an accused person for an offence under a less serious section of the Penal Code when really the offence falls under a more serious section, which is beyond his competence, his proceedings are not illegal; and an award of compensation made by him under section 250 of the Criminal Procedure Code is not illegal, although the offence would really be triable exclusively by a Court of Session.

*King-Emperor v. Ayyan*, (1901) I.L.R., 24 Mad., 675, applied.

PETITION under sections 435 and 439 of the Criminal Procedure Code, 1898, and section 107 of the Government of India Act, praying the High Court to revise the order passed by M. G. SYKES, Sessions Judge of North Arcot, in Criminal Revision Petition No. 18 of 1920, presented against the order of M. SUNDARARAJAN, First class Subdivisional Magistrate of Tiruvannāmalai, in Calendar Case No. 12 of 1920.

The material facts are set out in the Order.

*S. E. Sankara Ayyar* for *V. V. Devanadha Ayyangar* for petitioner.

*T. Narasimha Ayyangar* and *T. L. Venkatarama Ayyar* for respondents.

*Public Prosecutor* for the Crown.

\* Criminal Revision Case No. 775 of 1920 (Criminal Revision Petition No. 648 of 1920).  
Library.

VENKAT-  
BAYAR  
v.  
VENKAT-  
BAYAR.

The Court made the following ORDER :—

In this case a compensation order under section 250, of the Code of Criminal Procedure, is attacked as illegal.

It is argued that the facts appearing in evidence constitute an offence under section 467 of the Indian Penal Code which is triable only by a Sessions Court, and that, in consequence, the Magistrate had no jurisdiction to act under section 250 of the Code of Criminal Procedure. In our opinion the offence disclosed was one under section 467; but the Magistrate undoubtedly regarded it as one under section 463 of the Indian Penal Code (which he had jurisdiction to try), and specifically refers to the latter section in his order. Does the former fact affect the legality of his order of compensation? We think not. The Magistrate undoubtedly proceeded under Chapter XXI of the Code of Criminal Procedure, and not under Chapter XIII and *King-Emperor v. Ayyan*(1) is clear authority for holding that if the case had ended in a conviction, that conviction would not be illegal merely because the offence committed really fell under a more serious section and was not one which the Magistrate was competent to try. Applying the line of reasoning adopted in that judgment to the present case, we think it must be held that as the Magistrate was not proceeding illegally in trying the accused for the lesser offence, he was not acting illegally in awarding compensation when he found the accusation to be frivolous or vexatious. Two cases have been cited for petitioner. Of these, *Emperor v. Ohhabo Dolsang*(2) is easily distinguishable, for in that case, the Magistrate was certainly acting under Chapter XVIII and passed his order of discharge under section 209. The other, *Het Ram v. Ganga Sahai*(3), is the decision of a single Judge and the

(1) (1901) I.L.R., 24 Mad., 675.

(2) (1917) 19 Bom. L.R., 60.

(3) (1918) I.L.R., 40 All., 615.

judgment leaves it doubtful which offence the Magistrate conceived himself to be inquiring into. We do not think there are any grounds for interference; and we dismiss this petition.

VENKAT-  
RAYAR  
v.  
VENKAT-  
RAYAR,

M.H.H.

## INSOLVENCY JURISDICTION.

*Before Mr. Justice Kumaraswami Sastri.*

IN THE MATTER OF T. A. CHIDAMBARA CHETTY AND  
OTHERS—INSOLVENTS.\*

1920,  
November 8

*Presidency Towns Insolvency Act (III of 1909), sec. 36—Claim for kist—Application to Insolvent Court by Official Assignee against ryot for kist, whether competent—Jurisdiction of Judge of Insolvent Court—Insolvency jurisdiction, whether Original jurisdiction of a Civil Court—Madras Estates Land Act (I of 1908), sec. 189—Jurisdiction of Revenue Court.*

The jurisdiction exercised by the High Court in insolvency is the Original Civil jurisdiction.

Section 36 of the Presidency Towns Insolvency Act, which provides for the determination by the Insolvency Court of all questions relating to debts due by third parties to the insolvent, cannot override the provisions of section 189 of the Madras Estates Land Act, which debars Civil Courts exercising Original jurisdiction from taking cognizance of any dispute or matter, in respect of which a suit or application might be made to a Revenue Court under that Act.

Consequently, the Official Assignee cannot apply to the Judge sitting in Insolvency for an order against a ryot for payment of kist due to the insolvent.

JUDGE'S summons to show cause why certain sums of money due as kist should not be directed to be paid to the Official Assignee.

The material facts are set out in the Judgment.

*R. N. Ayyangar* for the Official Assignee.

*N. Rajagopalan* instructed by *A. Kandaswami* for the garnishee.

\* Insolvency Petition No. 150 of 1916.