

APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Odgers.

RAMAMMA (COMPLAINANT), PETITIONER,

1923,
March 13.

v.

GURUNATHAM (ACCUSED), RESPONDENT.*

Proceedings under section 1, Workmen's Breach of Contract Act (XIII of 1859), not criminal proceedings—Absence of complainant—Dismissal of complaint—Power of Magistrate to review his order.

A Magistrate's proceedings under section 1 of the Workmen's Breach of Contract Act up to the stage of his passing an order for repayment or performance under section 2 of the Act are not proceedings under the Criminal Procedure Code and hence if owing to the absence of the petitioner on any occasion before the passing of an order under section 2, the Magistrate dismisses the complaint, it is not an acquittal under section 247, Criminal Procedure Code, but is merely a dismissal of the complaint which the Magistrate can review. *Hussaina Beari v. King-Emperor*, (1920) I.L.R., 48 Mad., 443 and *Averam Das Mochi v. Abdul Rahim*, (1900) I.L.R., 27 Calc., 131, followed *Girish Chandra Das v. Bhusan Das*, (1919) I.L.R., 46 Calc., 867, not followed.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure of 1898, and section 107 of the Government of India Act praying the High Court to revise the order of the Court of the Stationary Sub-Magistrate of Kovur, Nellore district, dated 29th day of October 1921, in Calendar Case No. 329 of 1921.

The facts are given in the Judgment.

S. Ranganadha Ayyar for petitioner.

V. L. Ethiraj for the Public Prosecutor.

* Criminal Revision Case No. 333 of 1922 and Criminal Revision Petition No. 290 of 1922.

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The Judgment of the Court was delivered by
AYLING, J.—The petitioner in this case has filed a
complaint under section 1 of the Workmen's Breach of
Contract Act against the respondent before the Stationary
Sub-Magistrate, Kovur, and that officer proceeded to
hear and determine the case as provided in the Act. On
one of the dates of hearing, the petitioner was absent and
the Magistrate thereupon passed an order purporting to
acquit the respondent under section 247 of the Criminal
Procedure Code. The petitioner subsequently applied
to the Magistrate to review the order of acquittal and to
proceed with the trial from the stage at which the case
was thrown out. The Magistrate held that he had no
power under the Criminal Procedure Code to review an
order of acquittal under section 247 and accordingly dis-
missed the petition. Against that dismissal the present
revision is preferred.

In our opinion the Magistrate's view was wrong. It
has been held by this Court in *Hussaina Beari v. King
Emperor*(1), that the Magistrate's proceedings under the
Workmen's Breach of Contract Act up to the stage of the
passage of an order by the Magistrate for repayment or
performance under section (2) are not criminal proceed-
ings at all, and this is also the view taken in *Emperor v.
Dhondhu*(2). If the proceedings are not criminal proceed-
ings, it is difficult to see how the procedure can be
regulated by Chapter XX of the Criminal Procedure
Code or how section 247 of the Code can be held to
apply. Mr. Ethiraj, who argued the case for the Public
Prosecutor, suggested that the definition of "summons
case" in the Code as "a case relating to an offence and
not being a warrant case" would cover proceedings
leading up to an offence (i.e., disobedience to a Magis-

(1) (1920) I.L.R., 43 Mad., 443.

(2) (1909) I.L.R., 33 Bom., 22.

trate's order), which has not been committed at the time when the proceedings were initiated; but it seems to us that that would be an unwarrantable stretch of the definition. The ruling in *Hussaina Beari v. King-Emperor*(1) is to the effect that no offence is committed until the workman disobeys the Magistrate's order. In the second place Mr. Ethiraj asks, under what provision of law the enquiry contemplated by the Act can be conducted at all, if not under the Criminal Procedure Code? We think the answer to it is contained in the closing words of section 1 of the Act, which empowers the Magistrate to "hear and determine the case." This view is in accordance with the judgment of the Calcutta High Court in *Averan Das Mochi v. Abdul Rahim*(2), in which the learned Judges have in fact held that the Criminal Procedure Code does not apply to the enquiry contemplated by section 1 of the Workmen's Breach of Contract Act. They say,

"the learned pleader, who appears for the petitioner, urges (1) that the evidence has not been properly recorded; and (2) that the Magistrate has written no judgment. He, however, has not been able to show us any section of Act XIII of 1859 or of the Criminal Procedure Code, prescribing how evidence in a case of this nature should be recorded or requiring a judgment to be written."

These words imply that Chapter XX of the Criminal Procedure Code does not govern the case. We have been referred to a Calcutta case, *Girish Chandra Das v. Bhusan Das*(3), similar to the present case, in which the learned Judges apparently assumed that section 247 would apply, but the question of the applicability does not appear to have been raised in that case at all, nor was their attention drawn to the difficulty.

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(1) (1920) I.L.R., 43 Mad., 443.

(2) (1900) I.L.R., 27 Calc., 131. (3) (1919) I.L.R., 46 Calc., 867.

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In our opinion, the enquiry directed by section 1 of the Workmen's Breach of Contract Act cannot be held to be one under Chapter XX of the Criminal Procedure Code and the Magistrate's order of acquittal was in effect not passed under that Chapter of the Code but was merely a dismissal of the complaint. Viewed in this light, there is nothing to prevent him from reviewing that order if he sees cause to do so. We must therefore set aside his dismissal of the petitioner's review petition, dated 23 February 1922, and direct him to restore the petition to file and dispose of it according to law.

N.R.

 APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Venkatasubba Rao.

1923,
February 9.

MAHARAJAH OF JEYPORE (PETITIONER), PETITIONER,

v.

SRI RAJAH GANGARAJU BAHADUR AND EIGHT OTHERS
(RESPONDENTS), RESPONDENTS.*

*Ganjām and Vizagapatam Agency Courts Act (XXIV of 1839)—
Rules XIV and II (3) under—Cases pending before such
Agency Courts—Power of High Court to transfer them to its
file.*

Under Rule XIV of the rules of 1920 framed under the Ganjām and Vizagapatam Agency Courts Act (XXIV of 1839) and under section 107 of the Government of India Act the High Court has power to transfer to its file cases pending before the Agency Commissioner. The High Court cannot transfer such cases to a District Court. *Maharajah of Jeypore v. Papayamma*, (1900) I.L.R., 23 Mad., 329, decided under the old rules of 1840 is no longer law.

PETITION praying that in the circumstances stated in the affidavit filed therewith the High Court will be pleased

* Civil Miscellaneous Petition No. 2076 of 1922.