

APPELLATE CRIMINAL.

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

RAMANATHAN CHETTIAR (SECOND ACCUSED),
PETITIONER,

1922,
August 15.

v.

KING-EMPEROR, RESPONDENT.*

Section 350 (1) (a)—Warrant case—Proceedings before framing charge, only enquiry and not trial—No right for accused for a de novo examination of witnesses.

In warrant cases all proceedings before the charge is framed are only "enquiry" and not "trial" and hence if there is a change of Magistrates before a charge is framed in such cases, the accused is not entitled to a fresh examination of witnesses as provided by section 350 (1) (a), Criminal Procedure Code. *Narayanaswamy Naidu v. Emperor*, (1909) I.L.R., 32 Mad., 220 (F.B.), *Sriramulu v. Veerasalingam*, (1915) I.L.R., 38 Mad., 585, and *Venkatachinnayya v. King-Emperor*, (1920) I.L.R., 43 Mad., 511 (F.B.), followed.

PETITION under sections 435 and 439 of the Code of Criminal Procedure (1898), praying the High Court to revise the Order of M. A. QADIR BADSHA, Subdivisional First-class Magistrate of Madura Division, in Calendar Case No. 56 of 1921.

This was a complaint against ten persons charging them with offences under sections 147, 341, 353 and 323, Indian Penal Code. After the examination-in-chief of all the prosecution witnesses and before any charge was framed the presiding Magistrate was transferred and was succeeded by another. At that stage the accused applied to the new Magistrate to recall the witnesses

* Criminal Revision Case No. 115 of 1922.

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and to examine them afresh. The Magistrate declined to grant the application. Against the said order the accused preferred this Revision Petition to the High Court under section 439 of Criminal Procedure Code.

A. Narasimha Ayyar (with *Dr. Swaminathan*) for petitioner.

Public Prosecutor (*J. C. Adam*) for Crown.

ORDER.

The question before us is in effect whether section 350 (1) (a), Criminal Procedure Code, can be applied to proceedings in a warrant case, before charge has been framed. That is in effect whether at that stage the proceeding is not a trial, but merely an enquiry. The authorities, *Narayanaswamy Naidu v. Emperor*(1), *Sriramulu v. Veerasalingam*(2) and *Venkatachinnayya v. King-Emperor*(3), are in favour of the view that such a proceeding is merely an enquiry, and we see no reason for departure from this series of considered decisions, two of them given by a Full Bench. There is therefore no legal objection to the Magistrate's order and the revision petition must be dismissed.

N.R.

(1) (1909) I.L.R., 32 Mad., 220 (F.B.). (2) (1915) I.L.R., 38 Mad., 585.

(3) (1920) I.L.R., 43 Mad., 511 (F.B.).
