

APPELLATE CRIMINAL.

Before Mr. Justice Devadoss and Mr. Justice Waller.

1926,
April 6.

RAJA RAO *alias* VIDYACHAR (COUNTER-PETITIONER),
PETITIONER,

v.

KING-EMPEROR, RESPONDENT. *

Criminal Procedure Code, 1898, sec. 476—Nature of enquiry under.

In a proceeding under section 476 of the Criminal Procedure Code, the nature, method and extent of the preliminary enquiry being at the discretion of the Court holding it, the enquiry need not be such as to satisfy the Court that an offence has actually been committed, the Court only having to decide (a) whether an offence of the kind contemplated by the section appears to have been committed and (b) whether in the interests of justice it should be further enquired into.

Abdul Ghafur v. Raza Hussain, (1912) I.L.R., 34 All., 257, approved.

Ganeshwar Paharaj v. King-Emperor, (1921) 6 Patna L.J., 146, dissented from.

In re Perumalla Venkata Subbiah, (1923) 44 M.L.J., 74, dissented from.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the orders of the Court of the District Magistrate of Coimbatore in Criminal Appeals Nos. 18 and 19 of 1925 against the orders of the Court of the Stationary Second-class Magistrate of Dhārāpuram in M.C. Nos. 5 and 6 of 1925 respectively.

K. S. Jayarama Ayyar and P. J. Kruppana Rao for the petitioners.

V. L. Ethiraj for Public Prosecutor for the Crown.

* Criminal Revision Case No. 711 of 1925.

JUDGMENT.

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WALLER, J.—The petitioners seek to have revised the order of the District Magistrate, Coimbatore, dismissing their appeals under section 476-B, Criminal Procedure Code. They were witnesses for the Crown in C.C. No. 134 of 1925 on the file of the Sub-Magistrate, Dhārāpuram.

That case ended in the discharge of the accused. The Sub-Magistrate held a preliminary enquiry under section 476, Criminal Procedure Code, and ordered complaints to be filed against the petitioners before the First-class Magistrate at Erode.

Mr. Jayarama Ayyar's main ground of complaint is that his clients were not allowed to cross-examine the witnesses who gave evidence against them at the preliminary enquiry. He conceded that a Magistrate is under no necessity to hold any enquiry at all, but contends that, if he does decide to enquire, the enquiry must be what some of the decisions on the point describe as a "real enquiry." By that expression is, I understand, meant an enquiry at which the future accused is entitled to be present, to cross-examine the witnesses against him and even—vide *Ganeshwar Paharaj v. King-Emperor*(1)—to produce evidence in his defence. I venture to doubt whether anything of the sort was intended by the legislature. What a Court has to decide under section 476 is, (a) whether an offence of the kind contemplated appears to have been committed; and (b) whether it is expedient in the interests of justice that it should be further enquired into. In order to arrive at a decision, the Court may, if it thinks fit, hold such preliminary enquiry as it considers necessary. The nature, method and extent of the preliminary

(1) (1921) 6 Patna L.J., 146.

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enquiry are, it seems to me, entirely at its discretion. The enquiry need not be such as to satisfy the Court that an offence actually has been committed, but merely that an offence appears to have been committed. What Mr. Jayarama Ayyar asks for, and some of the rulings quoted grant, is the equivalent of a full dress trial, which cannot, I think, have been in the mind of the legislature.

This is the view taken in *Abdul Ghafur v. Razu Hussain*(1). Other Allahabad cases have been cited to the contrary effect, but they have not considered the above ruling and none of them appears in the authorized reports. The latest Madras decision is reported in *Perumalla Venkata Subbiah, In re*(2), where it was held that, in the particular circumstances, the party should have been given an opportunity to cross-examine the witnesses against him. With great respect I prefer the Allahabad view above referred to. I cannot believe that the law intends that a Court which has complete discretion to refuse to hold any enquiry at all must, if it holds an enquiry, issue notice to the party and give him the equivalent of a full dress trial.

The enquiry that many of the rulings prescribe seems to me to go far beyond the essential requirements of section 476. As I have pointed out above, it is not necessary to find anything more than that an offence appears to have been committed, which ought to be enquired into further. I think that Mr. Jayarama Ayyar's first objection is groundless. His final request shows the complete undesirability of the procedure which he has been advocating. He asks for a transfer of the cases outside Coimbatore District on the ground that the District Magistrate has expressed a strong opinion on the merits. He has no legitimate cause for

(1) (1912) I.L.R., 34 All., 267.

(2) (1923) 44 M.L.J., 74.

complaint. The appeals were argued on the merits at great length. Petitioners invited the opinion of the District Magistrate and cannot complain when they have been given what they asked for. If the correct procedure under section 476 were that advocated by Mr. Jayarama Ayyar a discussion of, and decision on, the merits would be inevitable in every case. My own view is that the preliminary enquiry under that section should be of a nature merely to satisfy the Court that an offence "appears" to have been committed. Nothing more is necessary and a long discussion of a decision on the merits is as undesirable as it is unnecessary.

I see no reason to suppose that the Magistrate before whom the complaints have been presented has been influenced by the opinion of the District Magistrate. The petitions are dismissed.

DEVADOSS, J.—I agree.

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B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Curgenvven.

KANAGAMMAL (PETITIONER) PETITIONER,

v.

PANDARA NADAR (COUNTER-PETITIONER), RESPONDENT.*

1926
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Criminal Procedure Code (Act V of 1898), sec. 488—Maintenance Order—Duration of—Cancellation by Court—Wife returning to live with husband—if order automatically cancelled.

The general principle of law that an order whose term is not fixed, and whose currency is not made expressly dependent upon the continued existence of some circumstance or set of circumstances, remains in force until it is cancelled, is, *prima facie*, applicable to maintenance orders passed under section 488 of the Criminal Procedure Code. The husband may, on proof

* Criminal Revision Case No. 250 of 1926.