

## APPELLATE CRIMINAL.

Before Mr. Justice Devadoss and Mr. Justice  
Madhavan Nayar.

TIRUMALA VENKATA REDDY AND TEN OTHERS (ACCUSED),

1927,  
March 28.

v.

SIKATAPU RAMAYYA (COMPLAINANT).\*

*Criminal Procedure Code, sec. 408—Conviction by First-class Magistrate—Appeal against—Appropriate tribunal—Case before Second-class Magistrate—Magistrate invested with first-class powers before judgment—Appeal against his decision to District Magistrate—If competent.*

Under section 408 of the Criminal Procedure Code only a Court of Session can hear appeals against a conviction by a magistrate of the first class.

Where a case was taken up for trial by a magistrate of the Second class and before judgment was pronounced he was invested with first-class powers, *held*, a conviction by him in the case would be a conviction only as a magistrate of the first class.

*Sheobhanjan v. Emperor*, (1925) A.I.R. (Pat.), 472, approve d.

CASE referred for the orders of the High Court under section 438 of the Code of Criminal Procedure, 1898, by the sessions Judge of West Gōdāvāri Division.

The facts were shortly:—M. V. Subrahmanyam, Esq., I.C.S., was invested with powers of a magistrate of the second-class; and C.C. No. 67 of 1926 was transferred to him for disposal. He began the trial of the accused in February 1926 and framed a charge against the accused. On the 10th March 1926 he was invested with powers of a magistrate of the first class, and after he was so invested, the case was renumbered as C.C. No. 14 of 1926 on his file and he continued the trial, examined witnesses for the defence and convicted the accused. An appeal from that conviction was

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\* Criminal Revision Case No. 47 of 1927.

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preferred to the District Magistrate. The District Magistrate entertained the appeal, set aside the conviction and acquitted the accused. Against that decision Criminal Revision Petition No. 15 of 1926 was filed before the Sessions Judge to revise the order of the District Magistrate. On that the Sessions Judge made a reference to the High Court under section 438 of the Criminal Procedure Code.

*Public Prosecutor* for the Crown.

*P. V. Vallabhacharyulu* for the accused.

DEVADOSS, J.      DEVADOSS, J.—This is a reference by the Sessions Judge of West Gōdāvari Division. The case was tried by a magistrate who had second-class powers. The case was renumbered after he got first-class powers. He convicted the accused and an appeal against this conviction was preferred to the District Magistrate who quashed the conviction holding that the case against the accused was not made out. The question is whether the District Magistrate had jurisdiction to hear an appeal from the decision of a First-class Magistrate. The District Magistrate seems to justify his action on the ground that the trial was started by a Second-class Magistrate and he thought that he had jurisdiction to entertain the appeal. Section 408 of the Code of Criminal Procedure, 1898, says :

“ Any person convicted on a trial held by an Assistant Sessions Judge, District Magistrate or other Magistrate of the first class or any person sentenced under section 349 or in respect of whom an order has been made or sentence has been passed under section 380 by a Magistrate of the first class, may appeal to the Court of Session ”.

So it is clear that only a Court of Session can hear appeals against conviction by a First-class Magistrate. It is contended for the accused before us that inasmuch as the trial was begun by a Second-class Magistrate the appeal lay to the District Magistrate.

This on the face of it is an untenable position. The District Magistrate has jurisdiction to hear appeals only from the decisions of Second-class Magistrate. The moment a Second-class Magistrate is invested with the powers of a First-class Magistrate he becomes a First-class Magistrate and any convictions by him in cases which were taken up by him as a Second-class Magistrate would be only convictions as a First-class Magistrate. We do not think it necessary to cite any authority but we may refer with approval to the case of *Sheobhanjan v. Emperor*(1). The District Magistrate not having had jurisdiction to hear the appeal, his decision must be set aside as being without jurisdiction. We therefore set aside the acquittal by the District Magistrate on appeal, direct the Sessions Judge to send for the appeal records from the District Magistrate's Court, to take it on his file and to dispose of it according to law, after giving notice to the accused.

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### APPELLATE CRIMINAL.

*Before Mr. Justice Madhavan Nayar and  
Mr. Justice Curgenven.*

1927,  
September  
23.

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S. S. JAGANADHASWAMI NAIDU (ACCUSED),  
PETITIONERS,

v.

T. MANIKYAM (COMPLAINANT), RESPONDENT.\*

*Criminal Procedure Code, sec. 197—Tahsildar—Appointed polling officer by municipal chairman—Complaint against, of falsification and fabrication of election records—Previous sanction of local Government, if necessary.*

Where the services of a Tahsildar were lent to a Municipal Chairman and the Chairman appointed him as a polling officer

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(1) (1925) A.I.R. (Patna), 472.

\* Criminal Revision Case No. 872 of 1927.