APPELLATE CRIMINAL.

Before Mr. Justice Curgenven.

DAMODARAM (FIRST ACCUSED), PETITIONER.* 1929, July 31.

Code of Criminal Procedure (V of 1898), sec. 347—Commitment under—If can be made only after compliance with provisions of Chap. XVIII of the Code.

A commitment under section 347 of the Code of Criminal Procedure can be made only after compliance with the provisions of chapter XVIII of the Code. *In re Chinnavan*, (1914) 23 I.C., 734, followed.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the order of the Court of the Fourth Presidency Magistrate, Georgetown, Madras, in Calendar Cases Nos. 20776, 20777 and 20778 of 1928 respectively.

V. L. Ethiraj and *N. Somasundaram* for petitioner.

V. Rajagopalachari for *Crown Prosecutor* for the Crown.

JUDGMENT.

These are three applications presented by the first accused to revise the orders of the Fourth Presidency Magistrate, Georgetown, passed in the following circumstances. Complaints were laid against the petitioner in each of three cases under sections 406 and 420, Indian Penal Code. The predecessor of the present learned Magistrate heard the prosecution evidence and was then transferred. The present Magistrate on taking up the case formed the conclusion that it was one which should be tried by a Court of Session, inasmuch as it involved the offences also of forgery and

* Criminal Revision Cases Nos. 551 to 553 of 1929.

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using as genuine a forged document, rendered punishable by sections 467 and 471, Indian Penal Code, respectively. That being so, the question arose as to the procedure to be thereupon adopted. Applications were made by the petitioner for a *de novo* trial, and in the orders against which these revision petitions are preferred, the learned Presidency Magistrate has declined to grant them for certain reasons which he gives.

The petitions raise a question as to the construction of section 347, Criminal Procedure Code, which empowers a Magistrate at any stage of an inquiry or trial before its completion to "commit the case under the provisions hereinbefore contained." It is scarcely disputable that the phrase "under the provisions hereinbefore contained" must relate to those provisions in chapter XVIII of the Code which define the procedure to be adopted in inquiries into cases triable by the Court of Session. Nor can it be disputed that in all ordinary circumstances the procedure which a Presidency Magistrate follows in the trial of a criminal case is not identical with that laid down by chapter XVIII for the conduct of a preliminary inquiry. To begin with, the question would arise whether the method of recording evidence required by section 362 (1) in a case tried by a Presidency Magistrate in which an appeal lies was adopted, or whether, availing himself of the provisions of sub-section(4) of that section, the Magistrate deemed himself absolved from taking down the evidence at length. Mr. Ethiraj for the petitioner is, however, prepared to concede here that the evidence may have been taken down *verbatim* under the prior provision, so that he does not press this possible point of difference. There can be no question however that after the evidence was so recorded the provisions of section 360 were not complied with, namely, it was

not read over to each witness in the presence of the accused as required by that section, read with sections 207 and 208 of chapter XVIII.

The general question of the construction to be placed on section 347, Criminal Procedure Code, received consideration in a Full Bench case of the Lower Burma Chief Court composed of five Judges, *Emperor* v. *Channing Arnold*(1). The case came up to that Court after commitment and not, as here, before a committal order had been made. Nevertheless it was held by four of the learned Judges that a commitment made otherwise than under the provisions of section 347 as I have construed them above, that is to say, as requiring compliance with the terms of chapter XVIII, Criminal Procedure Code, was illegal and should be quashed. As observed by the learned Chief Judge,

> "Perhaps the strongest reason for holding that section 347 in no way overrides and in no way dispenses with the obligation of following chapter XVIII is that, in that chapter, the Legislature has laid down provisions for procedure before commitment some of which were obviously intended and rightly intended for the benefit of accused persons."

I may add that in the present cases the omission to read over the deposition to the witnesses is not a mere formal omission but may deprive the accused of the valuable right to contradict the witnesses during the sessions trial by reference to their prior statements. This Burma decision was quoted with approval in the judgment of a Bench of this Court, *In re Chinnavan*(2), upon a revision petition praying to quash the committal order in a case where a Stationary Sub-Magistrate, who had originally proceeded on a charge under section 354, Indian Penal Code, of indecent assault, subsequently and before delivering judgment,

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(1) (1912) 17 I.C., 813. (2) (1914) 23 I.C., 734.

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came to the conclusion that the case should be committed to the sessions under sections 376 and 511. The learned Judges say,

> "We agree entirely with the decision of the Full Bench of the Burma Chief Court that it was not intended by section 347 to enable the Magistrate to deprive the accused of any of the rights conferred on him by chapter XVIII";

and although in the case before them the committal order had already been passed and, finding no prejudice caused to the accused, they refused to quash it, it appears to me that, irrespective of my own view that this construction is clearly right, I should follow this authority in the absence of any to the contrary.

The learned Crown Prosecutor has urged that here also, as in *In re Chinnavan*(1), the petitioner must allege prejudice in order that the orders of the learned Presidency Magistrate may be set aside. I do not agree that, when these cases have not reached the stage of committal and nothing in the main proceedings has to be undone before the procedure which is prescribed by law can be followed, any question of the prejudice occasioned to the accused arises. He certainly has a right to claim that the provisions relating to inquiries before commitment shall be observed irrespective of any such consideration. My conclusion accordingly is that the orders under revision are unsustainable in law, and I set them aside and direct the lower Court to reopen the inquiry *de novo* in the light of the observations made above and proceed with it.

B.C.S.

(1) (1914) 23 I.C., 734.