

and are collectively dependent on and form particulars of the claim for a general account, I think this objection must be overruled. I therefore agree that this is a fit case for appeal to the Privy Council and that the certificate may issue.

SUNDARA
MUDALIYAR
v.
RATNAVELU
MUDALIAR.
—
ODGERS, J.

N.B.

APPELLATE CRIMINAL.

*Before Mr. Justice Waller and Mr. Justice
Krishnan Pandalai.*

PANCHANATHAM PILLAI, PRISONER.*

1929,
January 16.

General Clauses Act (X of 1897)—“Magistrate”—Definition of—If confined to Magistrates exercising jurisdiction under Criminal Procedure Code—Intention of legislature—Confession to a Juge d’instruction—If admissible under sec. 26 of Indian Evidence Act.

Under section 26 of the Indian Evidence Act, British Indian Courts are not precluded from taking into consideration confessions made by prisoners in police custody to Magistrates in England or in a foreign country, the definition of “Magistrate” in the General Clauses Act not being confined to Magistrates exercising jurisdiction under the Code of Criminal Procedure.

A confession made by a prisoner in police custody to a *Juge d’instruction* in French India, if otherwise proper, is admissible in evidence. *Queen-Empress v. Nagla Kala*, (1896) I.L.R., 22 Bom., 235, referred to.

TRIAL referred by the Court of Session of the East Tanjore Division at Negapatam for confirmation of the sentence of death passed upon the said prisoner in case No. 19 of the Calendar for 1928.

* Referred Trial No. 124 of 1928.

PANCHANATHAN
PILLAI,
In re.

N. Somasundaram for appellant.

K. N. Ganpati for *Public Prosecutor* for the Crown.

JUDGMENT.

The appellant has been convicted of the murder of his daughter, with whom he is alleged to have been on bad terms. They were living together in the French portion of a village which is partly in French and partly in British territory. The appellant, it is said, went away with his daughter on the 15th or the 16th July 1926 and returned the next day alone. On the 18th P.W. 1 complained to the French Police, that the appellant had murdered his daughter, and at about the same time the appellant reported her disappearance. The appellant was arrested, and at once made a confession to a Police Officer, who has since been dismissed for torturing prisoners in order to extort confessions from them. After this the appellant was placed before the *Juge d'instruction*, to whom he made a statement (Exhibit J-1) that his daughter was tired of life and that he assisted her to commit suicide. Though it was by then obvious that the murder—if it was a murder—was committed in British territory, a French Sub-Inspector, accompanied by a British Constable, took the appellant to the river where his daughter had been drowned. The body was not found at the place indicated by the appellant. On the next day it was found a considerable distance away on information furnished by a shepherd boy. That death was not due to natural causes is clear. For the hands had been tied together, and the cloth was weighted with bricks. At the same time, there was nothing to show that the woman had been stunned, or that there had been a struggle between her and her father, before her hands were tied and her cloth was filled with bricks. The *Juge d'instruction*, who is a sort of Committing

Magistrate, with power to commit or discharge a prisoner, but not to convict, continued his enquiries till January 1927, when he sent the appellant up to the *Chambre des mises en accusation* at Pondicherry. That Court in April held, that it had no jurisdiction, as the crime had been committed in British territory, and the appellant was a British subject. What happened after that is not clear, but it was not till October 1928 that the appellant was tried by the Sessions Judge of East Tanjore.

PANCHANATHAN
PILLAI,
In re.

A great part of the exhibits consists of the record of the French investigation, of statements made by witnesses, and of admissions extracted from the appellant. Mr. Ganpati concedes that most of it is inadmissible in evidence. He, however, excepts Exhibit J-1, the statement made by the appellant to the *Juge d'instruction*, which appears to us to be admissible under section 26 of the Evidence Act. The appellant was, no doubt, in police custody at the time, but he was in the immediate presence of a judicial officer, and if that officer is a Magistrate within the meaning of section 26, the statement is admissible, provided, of course, that there is no other legal objection to its validity. We are clear that the *Juge d'instruction* is a Magistrate within the meaning of the section. The definition of "Magistrate" in the General Clauses Act is not confined to Magistrates exercising jurisdiction under the Criminal Procedure Code; it merely includes them. As pointed out in *Queen-Empress v. Nagla Kala*(1), it can scarcely have been the intention of the legislature to exclude from the consideration of our Courts confessions made by prisoners in Police custody to Magistrates in England

(1) (1896) I.L.R., 22 Bom., 235.

PANCHANATHAN
PILLAI,
In re.

or in a foreign country. We therefore hold that Exhibit J-1 is admissible in evidence.

[Their Lordships then discussed the evidence.]

We set aside the conviction and sentence and direct that the appellant be set at liberty.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Waller and Mr. Justice Jackson.

1928,
December 21.

T. R. SRIRAMULU NAIDU AND ANOTHER (ACCUSED).

PETITIONERS *

Indian Penal Code, sec. 471—Scope of—Person forges document and uses it as genuine—If can be sentenced for both the offences.

Section 471 of the Indian Penal Code only lays down that the sentence that can be imposed for the offence of using a forged document as genuine, is the same as the sentence that can be imposed for the offence of forgery; and a person who both forged a document and used it as genuine can be sentenced for both the offences. *Queen-Empress v. Umrao Lal*, (1900) I.L.R., 23 All., 84, dissented from.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the Judgment of the Court of Session of Trichinopoly Division, dated 5th July 1928 in Criminal Appeal No. 15 of 1928 preferred against the Judgment of the Assistant Sessions Judge of Trichinopoly Division in Sessions Case No. 10 of 1928.

V. L. Ethiraj and *A. S. Sivakaminathan* for petitioners.

K. N. Ganpati for Public Prosecutor for the Crown.

* Criminal Revision Case No. 624 of 1928.