

## APPELLATE CRIMINAL.

*Before Mr. Justice Reilly.*

PUBLIC PROSECUTOR, MADRAS, PETITIONER,

v.

1928,  
November  
30.CHOCKALINGA AMBALAM AND FIVE OTHERS (ACCUSED),  
RESPONDENTS.\*

*Code of Criminal Procedure (V of 1898), sec. 526—“ Trial ”—  
Meaning of—Application for adjournment under sec. 526  
when judgment about to be pronounced—Application dis-  
missed and judgment pronounced—If sec. 526 (8) contra-  
vened.*

A trial, as that word is used in the Criminal Procedure Code, is completed, before the judgment is pronounced.

Where an application for an adjournment was made under section 526 of the Code just when the judgment was about to be pronounced and the application was dismissed and the Court pronounced judgment, *held*, that the dismissal of the application was proper and that the provisions of section 526 (8) were not contravened.

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 the Ramnad Division in Criminal Appeals Nos. 28 and 31 of 1928 preferred against the judgment of the Court of the Subdivisional Magistrate of Devakottai in Criminal Case No. 116 of 1926.

*Public Prosecutor* for petitioner.

*Vere Mockett* for respondents 1 to 5.

*C. Narasimhachari* for respondent 6.

## JUDGMENT.

The two appeals to which this revision petition relates have not been heard upon the merits, as the

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\* Criminal Revision Case No. 806 of 1928.

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Sessions Judge has ordered a retrial of the case in consequence of what he regards as illegalities in the original trial.

On 26th April 1928 the trying Magistrate refused to adjourn the case when the Vakil for the accused intimated his intention of making an application to the High Court for a transfer. The learned Sessions Judge is of opinion that the Magistrate in refusing an adjournment on that occasion acted in violation of Section 526 (8), Code of Criminal Procedure. The learned Public Prosecutor contends that the intimation of intention to apply for a transfer was not made in the course of the trial, which had been closed before it was made, though judgment had not then been pronounced, and therefore the Magistrate in refusing to adjourn the case did not contravene the provisions of section 526 (8). It appears that before the Sessions Judge the Public Prosecutor of Ramnad conceded that after refusing to adjourn the case the Magistrate heard arguments in the case before he pronounced judgment. If that were so, the trial would not have been over before the intimation of intention to apply for a transfer was made. In an affidavit in support of an application to this court for bail (Criminal Mis. Petition No. 288 of 1928) the Vakil for the accused asserted that some arguments in the case were heard by the Magistrate after he refused the adjournment and before he pronounced judgment. But the Magistrate himself has stated that he heard no arguments in the case after refusing the adjournment. His diary shows that, when the judgment was about to be pronounced, an application under section 526 was made and dismissed and that he then pronounced judgment. His order on the application itself shows that the application was presented when the judgment was about to be pronounced. The Prosecuting

Sub-Inspector of Police, who conducted the prosecution, has made an affidavit that no arguments were heard after the application for adjournment was made. I am informed that the local Public Prosecutor, who made the "concession" before the Sessions Judge, had not appeared at any earlier stage of the case and was not instructed to make any such "concession." I must accept the Magistrate's account of what happened before him, which, as I have mentioned, is supported by the record of the case, and find that no argument was heard after the application for adjournment was made but that the case had been closed before that application was made. It has been contended for the accused that, nevertheless, an application made before judgment was actually pronounced, would be made in the course of the trial within the meaning of section 526, on the ground that the trial includes the pronouncing of judgment. But sections 366 and 497 of the Code make it clear that a trial as that word is used in the Code, is over before the judgment is pronounced and that the pronouncing of judgment is no part of the trial. I find therefore that the intimation of intention to apply for a transfer and the application for adjournment for that purpose on 26th April 1928 were not made in the course of the trial and that the Magistrate's refusal to adjourn the case did not violate the provisions of section 526 (8) and did not invalidate the trial.

[His Lordship then dealt with other objections raised to the regularity of the trial and concluded :—]

Mr. Mockett has appealed to me not to interfere in revision with the Sessions Judge's order for retrial, which he urges would be unusual and improper. It is curious that the accused should be so anxious to be tried again before their appeals have been heard in full. In my opinion, now that I have found that the trial was

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not vitiated by illegalities, as suggested, it would be improper to allow more public time to be spent on trying this case, which has already been so unduly protracted, instead of having the appeals heard and disposed of in the ordinary way. The Sessions Judge's order setting aside the convictions and sentences and directing the case to be retried is reversed. The records will be returned to him. He is directed to hear the appeals in full and dispose of them with the least possible delay.

B.C.S.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Waller.*

SUBAN SAHIB AND THREE OTHERS (ACCUSED), PETITIONERS.\*

1928,  
October 29.

*Indian Evidence Act (I of 1872), sec. 54—Criminal Court passing sentence—if precluded from considering evidence of bad character including previous conviction even where exercise of powers under sec. 75 of the Indian Penal Code not intended.*

Section 54 of the Indian Evidence Act does not preclude a Criminal Court from considering evidence of bad character including previous convictions in passing sentence on an accused, even in cases where it is not intended to exercise the powers conferred by section 75 of the Indian Penal Code. *Emperor v. Ismail Ali Bhai*, (1914) I.L.R., 39 Bom., 326, followed.

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, Trichinopoly Division, in Criminal Appeal No. 8 of 1928, preferred against the judgment of the Court of the

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\*Criminal Revision Case No. 278 of 1928.