

before it is delivered. I make these observations in order to prevent irregularities in the procedure of the Bench Magistrates. In these two cases, seeing that the judgment was prepared and delivered in the absence of other members of the Bench, I set aside the conviction and order a re-trial. The fines if paid will be refunded.

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v.  
SUBBA RAO.

*Cri. R.C. No. 971 of 1927.*

In this case the judgment was prepared by the presiding officer in the absence of the other members of the Bench. The remark that I have made with regard to the judgment in the other two cases apply to this. But this is a case of acquittal and seeing that this is a petty case, though the judgment is an illegal one, it is unnecessary to order a re-trial.

I therefore dismiss this petition.

B.C.S.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Reilly.*

CHELLAPATHI NAIDU AND TWO OTHERS  
(COUNTER-PETITIONERS), PETITIONERS,

1928,  
August 17.

v.

T. SUBBA NAIDU (PETITIONER), RESPONDENT.\*

*Criminal Procedure Code (V of 1898), sec. 145 (1)—Order under—Magistrate's local jurisdiction over land or water in dispute essential.*

An order under section 145 (1) of the Criminal Procedure Code can be made only by a Magistrate having local jurisdiction over the land or water in dispute.

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\* Criminal Revision Case No. 344 of 1928.

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Where a petition was presented to a District Magistrate praying for action under section 145 of the Code in respect of certain land, and he transferred it for disposal to a Sub-divisional Magistrate, the limits of whose jurisdiction did not include the land in question, and the latter passed an order first under section 145 (1) and then under 145 (6), *held*, that the whole proceedings were illegal.

PETITION 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 Subdivisional Magistrate of Tiruvallur, dated 24th December 1927, in Mis. Case No. 19 of 1927,

*M. S. Venkatarama Ayyar* for petitioners.

*C. Narasimhachari* for respondent.

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

#### JUDGMENT.

In this case the Subdivisional Magistrate of Tiruvallur in the Chingleput District has made what purports to be an order under section 145 (6) of the Code of Criminal Procedure. It is objected for the petitioners here that that order was made without jurisdiction. It appears that the respondent here presented a petition to the District Magistrate of Chingleput alleging that there was likely to be a breach of the peace in connexion with certain land and praying for action to be taken under section 145 of the Code. The District Magistrate, as he says, decided "to take the petition on file" and then transferred it to the Subdivisional Magistrate of Tiruvallur for disposal. The Subdivisional Magistrate of Tiruvallur proceeded to make what purported to be an order under section 145 (1). But it happened that the land concerned was not within the local limits of the jurisdiction of that Subdivisional Magistrate. The petitioners here therefore contend that he had no jurisdiction to initiate proceedings under section 145 (1).

For the respondent it is contended that the District CHELLAPATHI  
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NAIDU. Magistrate had, under section 192 of the Code, power to transfer the inquiry at any stage and that the District Magistrate having once transferred this matter to the Subdivisional Magistrate of Tiruvallur, that Subdivisional Magistrate had jurisdiction to proceed with an inquiry under section 145. *Arumuga Tegundan and another*(1) and *Satish Chandra Panday v. Rajendra Narain Bagchi*(2) have been quoted for the respondent to show that inquiries under section 145 of the Code may be transferred by the proper authorities from one Court to another. But it must be noticed that, in each of those cases, the order under section 145 (1), which is the initiatory step in proceedings under section 145, had been made by a Magistrate who had local jurisdiction over the land concerned. In view of the decision in *Arumuga Tegundan and another*(1), I must take it that, if the District Magistrate had himself made an order under section 145 (1) in this case, as he had undoubtedly jurisdiction to do, and had then transferred the matter to the Subdivisional Magistrate of Tiruvallur, the Subdivisional Magistrate of Tiruvallur would have had jurisdiction to proceed with the inquiry, though I may perhaps venture to say that, if I had not that decision before me, I should have regarded that question as open to doubt. But I have no doubt that the order under section 145 (1) in such a case must be made by a Magistrate having local jurisdiction over the land or water concerned. That I think is made clear both by the object and wording of the section. The object of section 145 is, not to provide parties with an opportunity of bringing their civil disputes before a Criminal Court or of manœuvring for position for the purpose of

(1) (1902) I.L.R., 26 Mad., 188.

(2) (1895) I.L.R., 22 Cal., 808.

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subsequent civil litigation, though that is often the effect of such proceedings, but to arm the Magistrate concerned with an additional weapon for maintaining peace within the area for which he is responsible. And the wording of section 145 (1) requires the Magistrate to state in his initial order that he is satisfied that there is a dispute likely to cause a breach of the peace concerning some land or water or its boundaries within the local limits of his jurisdiction. It is not the business of any Magistrate as such to maintain order or peace outside the limits of his local jurisdiction. What the Tiruvallur Subdivisional Magistrate has in effect done in this case is to say "I am satisfied that there is a dispute likely to cause a breach of the peace concerning some land within some one else's jurisdiction, and I propose to use my powers to prevent it", which is almost an absurdity. The learned Subdivisional Magistrate has, I think, felt the difficulty of his position, as in his order purporting to be made under section 145 (1) he has said that the land is within his jurisdiction "as per the proceedings of the District Magistrate." Now in this Presidency a District Magistrate may post one Subdivisional Magistrate to the charge of another sub-division; but he has no power to alter the boundaries of any sub-division of his district permanently, temporarily or for the purpose of a particular case. No order of the District Magistrate could have brought the land with which we are concerned within the local jurisdiction of the Subdivisional Magistrate of Tiruvallur. That being so, I think it is clear that the Subdivisional Magistrate's order under section 145 (1) in this case was without jurisdiction, and it follows that his whole proceedings were without jurisdiction. There does not appear to be any direct authority on this point; but

*Konda Reddi v. King-Emperor*(1), which deals with a somewhat similar provision in section 107 of the Code, takes in effect the same view of the matter as I have done.

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I may add that in this case, even if the learned Sub-divisional Magistrate's order had not been without jurisdiction, it would have been necessary to send the proceedings back to him in order that he might write a proper judgment in the case. What he has done is, when he came to the end of his inquiry, to fill up Form 22 in Schedule V of the Code, which is in the nature of a decree, and leave the matter there without any explanation of his reasons or his view of the evidence put before him. It would be very convenient to Magistrates if they could be allowed to dispose of such cases in that way; but there can be no doubt that it is their duty to write an order or judgment which shows that they have considered the contentions of the parties and the evidence put before them and which gives the reasons for their decision. There is nothing in section 145 to absolve a Magistrate from that ordinary duty.

The whole proceedings of the Subdivisional Magistrate in this case are set aside.

B.C.S.

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(1) (1917) I.L.R., 41 Mad., 246.

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