to the petitioner. No preliminary notice is necessary. The only argument that suggests itself to me against the view I am now taking is this: cases occasionally arise in which the powers under section 144 are abused by Magistrates. Sometimes orders are passed under section 144 repeatedly, that is, as each order expires by the lapse of two months a further order is made for a like period and so on. It has been observed that such a procedure is an abuse of powers given under the Code and ought to be set aside. The question arises how is an order to be set aside where it is an abuse of the power conferred by the Code. I can only say that probably in such cases the power under section 107 of the Government of India Act will have to be invoked. Anyhow I do not see enough reasons to doubt the correctness of the decision in *Nataraja Pillai* v. *Rangasami Pillai*(1), and until doubt is thrown upon it by a more authoritative decision, I am bound to follow it. I hold that no revision lies in this case and the revision petition is dismissed.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Curgenven.

RANGASAMI GOUNDAR (ACCUSED), PETITIONER.* 1928, July 20.

Indian Penal Code, sec. 216—*Constituents of offence under*—*Subsequent acquittal of person harboured*—*If affects conviction under sec.* 216.

To constitute an offence under section 216 of the Indian Penal Code it is sufficient to show that against the person

(1) (1923) 17 L.W., 409.

* Criminal Revision Case No. 952 of 1927.

RANGASAMI GOUNDAR, *In re.*

harboured, orders of apprehension had issued for an offence alleged against him, and the subsequent acquittal of the person harboured cannot affect the legality of a conviction under the section.

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 Coimbatore Division in Criminal Appeal No. 119 of 1927, preferred against the judgment of the Subdivisional Magistrate of Pollachi in Calendar Case No. 333 of 1926.

V. Balasundaram Ayyar for petitioner.

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

JUDGMENT.

The petitioner who prefers this Criminal Revision Petition has been convicted under section 216, Indian Penal Code of harbouring a person, for whose apprehension orders had been issued, knowing of those orders and intending to prevent his being apprehended. The person in question Marappa Goundan, was himself convicted under section 215, Indian Penal Code, but was acquitted on appeal. The main argument now addressed to me is that when the person harboured has been found to be not guilty, an essential ingredient of the offence under section 216 is lacking and accordingly that the conviction is bad. In order to support this argument a number of cases relating to other sections have been cited. I do not consider that it is necessary for me to examine them in detail, as it will be found in each instance that it was held to be implicit if not expressed in the terms of the section dealt with that the person in respect of whom the offence was committed was himself an offender, i.e., found guilty of an offence. For instance,

in *Empress of India* v. *Abdul Kadir*(1), which dealt with section 201, Indian Penal Code, it was considered not to be sufficient to show that there was reason to believe that an offence has been committed but that it must be shown that an offence had actually been committed, and that this is so is, I think clear from the opening words of that section. The same remark applies *mutatis mutandis* to the cases of *The Queen* v. *Joynarain Patro*(2), dealing with section 203, *Queen Empress* v. *Fateh Singh*(3), dealing with section 212, *Girish Myte* v. *Queen Empress*(4), and *Emperor* v. *Sanalal Lallubhai*(5), dealing with section 213 and *Queen Empress* v. *Saminatha*(6), dealing with section 214. In the case of each of these sections, the nature of the offence, rightly construed, requires that the person in respect of whom it was committed had himself committed an offence. The same principle holds good, of course, with section 214, Indian Penal Code, which renders punishable the screening of a person from legal punishment for any offence. It is clear that no person can be screened from legal punishment for an offence, if he has not rendered himself liable to it by his conduct. I can however discover no such necessary component in section 216. It is enough in my view to show that against the person harboured orders of apprehension had issued for an offence, that is to say, for an offence alleged against him. That this is the meaning to attach to the word "offence" occurring in the section is, I think, clear from the explanation of the word, as applied to acts committed outside British India, given in the sixth paragraph of the section. The purpose of the provision appears to me to penalise acts designed to obstruct or

(1) (1880) I.L.R., 3 All., 279 (F.B.). (2) (1873) 20 W.R. (Cr.), 66.
(3) (1889) I.L.R., 12 All., 432. (4) (1896) I.L.R., 23 Calc., 420.
(5) (1913) I.L.R., 37 Bom., 658. (6) (1891) I.L.R., 14 Mad., 400.

RANGASAMI GOUNDAR, *In re.*

defeat the course of justice which requires that suspected persons should be arrested whether they may prove eventually to be guilty or innocent, and that it is not necessary to show that the offence in respect of which orders of apprehension were issued was actually committed. I am unable, therefore, to accept this as a ground for revision.

It is then said that the trial Magistrate, although he conceded to the accused his demand for a *de novo* trial, acted upon some of the materials recorded in the earlier proceedings. I do not think it necessary to decide here whether the effect of a *de novo* trial is to wipe out all previous proceedings, because with one very small exception, it is clear that the conviction is based exclusively upon the evidence recorded at the new trial. That exception consists in a remark by the Court that the accused had not stated before the previous Magistrate that he was not present in the village on the day in question. I do not think that that consideration can have had any material effect in securing his conviction, nor do I find any substance in the objection that in putting his first question to the accused the Subdivisional Magistrate said " Do you wish to state anything more ? " because, in point of fact, the accused seems not to have been misled into supposing that his earlier statement would be taken into consideration, but proceeded to repeat in substance what he had then stated.

It is then said that the appellate judgment deals inadequately with the defence evidence. It is true that it has dismissed it with some brevity, but the evidence has been very fully discussed by the Subdivisional Magistrate and I think it received as much consideration from the learned Sessions Judge as its importance merited.

Although I hold that the acquittal of the person harboured cannot affect the legality of the conviction, I think it may well be taken into consideration in awarding sentence. The petitioner has been sentenced to rigorous imprisonment for six months and it appears that the circumstance that the person harboured had received a sentence of two years was weighed in awarding that sentence. Since the latter has subsequently been acquitted, it will, I think, meet the ends of justice if the term of imprisonment awarded be limited to the period already undergone. To this extent, I allow this Criminal Revision Petition.

B.C.S.

APPELLATE CRIMINAL.

Before Sir Murray Coutts Trotter, Kt., *Chief Justice and Mr. Justice Pakenham Walsh.*

GNANAMBAL (PETITIONER), PETITIONER.*

1928, July 31.

Criminal Procedure Code, sec. 488—Maintenance order under—Person made liable to pay residing outside jurisdiction of Court passing order—If such Court competent to enforce order.

A Magistrate making an order for maintenance under section 488 of the Criminal Procedure Code is competent to enforce it against the person made liable for the payment of such maintenance, even though such a person resides outside the jurisdiction of his Court.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to

* Criminal Revision Case No. 451 of 1928.