NARASIMHA-MURTI, *In re.*

aside, and the appeal will be sent back to the District Magistrate of East Gōdāvari to be heard by him or by some other competent Magistrate other than the one who disposed of it.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Wallace and Mr. Justice Jackson.

1930, March 27.

IN RE EKAMBARA MUDALI (ACCUSED IN BOTH), PETITIONER.*

Revision—Subordinate Criminal Courts—Whether competent to revise their own orders—Procedure where mistake has been committed.

In this Presidency it is a clear rule of processual law that no Subordinate Criminal Court can sit in revision upon its own record, and decide whether upon a certain view of the facts, its proceedings should be treated as null. If it is thought that a mistake has been committed, the matter must be referred to the High Court.

(1875) High Court Proceedings, 17th Aug. 1875, No. 1793, II Weir, 307, and *Achambit Mandal* v. *Mahatab Singh*, (1914) I.L.R., 42 Calc., 365, referred to.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the orders of the Court of the First-class Bench of Magistrates of Vellore, dated 22nd April 1929, and passed in Summary Trials Nos. 233 and 234 of 1929.

A. Ramaswami Ayyar for petitioner in both.

P. Govinda Menon for respondents in both.

---

* Criminal Revision Cases Nos. 571 and 572 of 1929.

Public Prosecutor (*L. H. Bewes*) for the Crown in both.

JUDGMENT.

The petitioner has been sentenced to a fine of Rs. 15, in default two weeks' rigorous imprisonment, under section 352, I.P.C., in the following circumstances :—

The case was filed before the First-class Bench, Vellore, on 19th February 1929 and posted to 26th February. On 26th February, according to the diary extract, it was adjourned to 1st March. On 1st March the complainant was absent, and the accused, the present petitioner, was acquitted under section 247, Criminal Procedure Code. On the 5th March the complainant's vakil represented that the posting to the 1st was a mistake for the 5th. Thereupon an entry was made in the diary for the 5th March : "Alamelu Ammal prefers a complaint against Ekambara Mudali. Her sworn statement is recorded. The case is taken on file under section 352, I.P.C., and posted to 19th March 1929."

This was merely a revival of the old complaint dismissed on 1st March 1929. There was, as a matter of fact, no fresh stamped complaint and no sworn statement on 5th March. There was a complaint on plain paper, dated 5th March, and a sworn statement, dated 26th March.

The petitioner complains that having once been acquitted he cannot be retried for the same offence. The President thinks that his Court can act as a Court of Revision and decide which of its decisions may or may not be quashed. In any circumstances there is no legal authority for making false records in the Court's diary. If the President thought he could treat the order of acquittal as a nullity, he should have done so, proceeding with the case of 19th February on 5th March as though

EYAMBARA MUDALI, In re.

nothing had happened on 1st March. But such procedure is quite contrary to the Code, which has never contemplated a Court sitting in revision upon its own completed and pronounced judgments. The President, if he thought there had been a miscarriage of justice, should have referred the matter to the District Magistrate, who, if so advised, could have acted under section 438.

A case very similar to the present case is considered in *Achambit Mandal* v. *Mahatab Singh*(1) and there it is held that the acquittal following upon a mistake about the posting date is a nullity, and the trial may proceed as if it had never been pronounced. This ruling is in terms based upon II Weir, 307, but the Madras decision is no authority for the Court acting in revision of its own proceedings. A Third-class Magistrate posted a case to a certain date without informing the parties, and on their non-appearance, acquitted the accused. The District Magistrate ordered him to restore the case to file. The Sessions Judge questioned the legality of this order, and this Court, holding that the Third-class Magistrate's procedure was substantially irregular, set aside the order of acquittal. It did not confine itself to returning the record with the observation that there was no cause for interference, which it would have done if it had held, as the Calcutta case assumes, that the Third-class Magistrate could himself restore the case. That the District Magistrate has no jurisdiction to order a retrial was ruled in the next case but one in Weir's Criminal Rulings, see *Narayanasami Aiyan* v. *Janaki Ammal* (Criminal Petition No. 342 of 1881)(2). It must be taken as the processual law in this province that no Subordinate Court can sit in revision upon its own record,

(1) (1914) I.L.R., 42 Calc., 365. (2) (1881) II Weir, 308.

and decide whether upon a certain view of the facts, its proceedings should be treated as null. If it is thought that a mistake has been committed, the matter must be referred to the High Court.

The petition is allowed; the sentence is cancelled; the fine is ordered to be refunded; and the President is enjoined that his diary must be a plain record of fact and not a pious adaptation to circumstance.

B.C.S.

APPELLATE CRIMINAL—FULL BENCH.

Before Mr. Horace Owen Compton Beasley, Chief Justice, Mr. Justice Anantakrishna Ayyar and Mr. Justice Curgenven.

PILLA RAMASWAMI (ACCUSED), PETITIONER,

1930, April 15.

v.

THE PRESIDENT, TALUK BOARD, TADEPALLIGUDEM (COMPLAINANT), RESPONDENT.*

Madras Local Boards Act (XIV of 1920), secs. 164 (1) and 221—Penalty under sec. 164 (1) for alleged encroachment—Proceedings under sec. 221 for recovery—Whether Magistrate competent to enquire if alleged encroachment true and justified imposition of penalty.

A magistrate acting under section 221 of the Madras Local Boards Act (XIV of 1920) in proceedings for the recovery of a penalty imposed by a Local Board under section 164 (1) of the Act in respect of an alleged encroachment is competent to enquire whether the alleged encroachment was true and justified the imposition of the penalty.

In re Raheem Sahib, (1929) I.L.R., 52 Mad., 714, approved. *Ramachandran Servai* v. *President, Union Board, Kuraikudi*, (1925) I.L.R., 49 Mad., 888, dissented from.

---

* Criminal Revision Case No. 894 of 1929.