

APPELLATE CRIMINAL.

1929,
September 6.*Before Mr. Justice Waller and Mr. Justice Cornish.*

T. M. A. NATHAN (ACCUSED), PETITIONER. *

Code of Criminal Procedure (V of 1898), ss. 265 and 537 — Judgment to be signed by all members of Bench present— Failure to comply—Not an illegality and cured under section 537.

In a trial before a Bench of Magistrates, by whomsoever the judgment and record may have been written, they should, under section 265 of the Code of Criminal Procedure, be signed by all the members of the Bench present; but failure to comply with this provision is not necessarily an illegality, and may, where no failure of justice had been occasioned, be cured by section 537 of the Code. *Rama Kotiah v. Subbiah* (1929) I.L.R., 52 Mad., 237 referred to.

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 the Bench of Magistrates, Ootacamund, dated 18th October 1928, in Summary Trial No. 610 of 1928.

V. L. Ethiraj for petitioner.

Public Prosecutor (L. H. Bewes) for the Crown.

JUDGMENT.

The petitioner has been convicted by a Bench of Magistrates. He comes up in revision on the ground that the judgment convicting him is illegal, as it has been signed only by the Chairman of the Bench. We think that that is a perfectly good ground of objection. Section 265 of the Code of Criminal Procedure is divided into three sub-sections. The first provides that records and judgments shall be *written* by the presiding officer in English or in the language of the Court or in his mother-tongue. The second prescribes that, if authorized by the Local Government, a Bench may employ a

* Criminal Revision Case No. 181 of 1929.

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clerk to prepare the record or judgment, which shall be signed by each member of the Bench present and taking part in the proceedings. The third directs that, if no such authority has been given, the record—which, presumably, includes the judgment—shall be prepared by a member of the Bench and signed “as aforesaid” and shall then be “the proper record”. The first subsection says nothing about signing the record or judgment, but deals merely with the language in which they shall be written. The intention, we think, is that, by whomsoever the judgment and record may have been written, they shall be signed by all the members present. We have been referred to a decision *contra* by DEVADOSS, J., in *Rama Kottiah v. Subba Rao*(1), which is based on the wording of section 367 of the Code of Criminal Procedure. With great respect, we do not consider that that section affords any assistance in the construction of section 265. The words “presiding officer of the Court” are no more than a compendious description of all classes of judicial officers, Magistrates and Judges, who have to pronounce judgment.

The Public Prosecutor invites our attention to section 537 of the Code of Criminal Procedure and argues that the omission should be treated as an irregularity, which has occasioned no miscarriage of justice. It has been held that the failure to comply with a mandatory provision of the Code is not necessarily an illegality. In this case, all the members of the Bench signed the register in which the sentence was embodied. They obviously agreed in the judgment, and we do not think that their omission to comply with the technical requirement of the law as to the signing of it was anything more than an irregularity, which occasioned no failure of justice.

There is, however, a further and fatal objection. It is founded on that disastrous provision of law, sub-section (8) of section 526 of the Code of Criminal Procedure, which is absolutely imperative in its terms. The petitioner, in the course of the trial, applied for an adjournment for the purpose of moving the High Court for a transfer, but the Bench rejected the application on the ground that it had been made after the trial had begun. That was, of course, no ground at all. Such an application can be made in the course of a trial, and must, unfortunately, be granted. To refuse it, contrary to the terms of the section, is to deny the applicant an absolute right conferred on him by the statute and vitiates the whole proceedings.

We set aside the conviction, but, as the case arises out of a family dispute, do not order a retrial.

B.C.S.

 PRIVY COUNCIL.*

GUDIVADA MANGANNA (PETITIONER),
APPELLANT,

1929,
December 3.

v.

MADDI MAHALAKSHMAMMA (RESPONDENT),
RESPONDENT.

[ON APPEAL FROM THE HIGH COURT AT MADRAS.]

Code of Civil Procedure (Act V of 1908), sec. 110—Right of appeal to Privy Council—Value of subject-matter of suit.

In section 110 of the Code of Civil Procedure, 1908, dealing with appeals to the King in Council from a decree or final order of a High Court, the words "the amount or value of the subject-matter of the suit in the Court of first instance" mean the amount or value at the institution of the suit, and not at the date of the decree in the Court of first instance; and that meaning is

* Present:—Viscount DUNEDIN, Sir GEORGE LOWNDEN and Sir BINOD MITTAL.