APPELLATE CRIMINAL.

Before Sir Owen Beasley, Kt., Chief Justice, and Mr. Justice Sundaram Chetti.

1931, February 17.

IN RE APPACHI GOUNDAN (IN P.R.C. No. 20 OF 1930 ON THE FILE OF THE COURT OF THE STATIONARY SUB-MAGISTRATE OF PALLADAM, FIFTH ACCUSED).*

Code of Criminal Procedure (Act V of 1898), sec. 435 (4)—"Made"—Meaning of—Not only "made" but "entertained and decided"—Revision petition to District Magistrate against order of Sub-Magistrate discharging one of several accused, rest having been committed to the Sessions—Endorsement by District Magistrate that application to Sessions Judge convenient—Petition withdrawn and another presented to Sessions Judge—Latter whether competent.

Where a petition was presented before a District Magistrate to revise the order of a Stationary Sub-Magistrate who had discharged one amongst several accused persons, the rest having been committed to the Sessions by him and the District Magistrate made the endorsement "As I am informed that the records are in the Sessions Court and the time is too short to get them to enable me to consider this case, I think it would be convenient if this application were presented to the Sessions Judge" on the petition, and the petition was thereupon withdrawn, and another petition was presented to the Sessions Judge,

Held, that the petition to the Sessions Judge was competent, as the word "made" in section 435 (4) of the Code of Criminal Procedure (Act V of 1898) should be construed to mean not only "made" but "entertained and decided".

CASE referred under section 438 of the Code of Criminal Procedure, 1898, for the orders of the High Court, by the Sessions Judge, Coimbatore, in his letter D. No. 1032, dated 13th February 1931.

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

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* Criminal Revision Case No. 120 of 1931.

JUDGMENT.

Before the Stationary Sub-Magistrate of Palladam there were six accused persons charged with the murder of one Narayana Goundan on the 27th of September last. Of these, five accused were committed to the Sessions but the fifth accused was discharged by him. As, in the opinion of the prosecution, the same evidence which established a prima facie case against the five accused also did so against the fifth accused, an application was made to the District Magistrate to revise the order of the Stationary Sub-Magistrate. When the petition was put in on the 24th January last the District Magistrate dealt with it in the following manner as will appear from his endorsement on the petition, "As I am informed that the records are in the Sessions Court and the time is too short to get them to enable me to consider this case, I think it would be convenient if this application were presented to the Sessions Judge". After that the petitioners thought that the better course would be to withdraw the petition and accordingly the petition was withdrawn and another petition presented to the Sessions Judge of Coimbatore. When the matter was gone into by him objection was taken by the Advocate for the fifth accused that the Sessions Judge was not entitled to hear the petition by reason of section 435 (4) of the Code of Criminal Procedure which states :

"If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them."

And it was argued that, as an application had been made to the District Magistrate under section 435, Code of Criminal Procedure, the Sessions Judge had no power to entertain a similar application. The learned Sessions Judge has in considering that objection taken

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the literal meaning of the word "made". In his view when the application was presented it was made, notwithstanding the fact that the District Magistrate declined to go into the merits of the application and said that the more convenient course would be to re-present the application to the Sessions Judge. We are unable to take the same view as the learned Sessions Judge has taken. We think that, particularly when the facts of the case are applied to the consideration of the sub-section, the word "made" means not only "made" but "entertained and decided". We are of the opinion that making an application does not merely mean presenting a petition to the Magistrate or the Sessions Judge but it must mean something more, i.e., that the application must be heard and determined. In this case the facts are very strong. It was much more convenient in the opinion of the District Magistrate for the Sessions Judge to entertain the application; otherwise he would have entertained it himself. We certainly think that it would be a very odd state of affairs if, after the Magistrate acted in the way he did, no further steps could be taken by the petitioners to revise the order of the Stationary Sub-Magistrate. That, in our opinion, is clearly wrong. We are of the opinion that it was open to the petitioners to present an application to the Sessions Judge and that it is open to the petitioners to re-present the same application to the District Magistrate. We accordingly make the order that the District Magistrate is to take this application again on his file and dispose of it according to law.

B.C.S.