

APPELLATE CRIMINAL.

Before Mr. Justice Jackson.

S. SENDIAPPA NADAR AND OTHERS (ACCUSED), PETITIONERS,

1930,
December 2.

v.

THE PRESIDENT, DISTRICT BOARD, MADURA

(COMPLAINANT), RESPONDENT.*

*Madras Local Boards Act (XIV of 1920), ss. 42 (b) and 159—
Removal of encroachment by owner of premises—Discretionary nature of duty of President of Union Board under sec. 159—President electing to allow encroachment to continue—Whether enables President, District Board, to act under sec. 42 (b).*

Under section 159 of the Madras Local Boards Act (XIV of 1920) the only duty imposed on the President of a Union Board is to exercise his discretion as to whether the owner of any premises should or should not be required to remove an encroachment; and, if he elect to allow an encroachment to continue, it cannot be said he has made default in performing his duty, so as to enable the President of the District Board to act under section 42 (b) of the Act and assume the function of the Union Board.

PETITIONS 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 Second-class Magistrate of Periyakulam, dated 21st June 1930, and made respectively in Criminal Cases Nos. 509, 511, 512, 514, 517, 519, 525 and 526 of 1930.

K. V. Sesha Ayyangar and *T. Ramachandra Rao* for petitioners in all the cases.

A. Srirangachari for respondent in all the cases.

* Criminal Revision Cases Nos. 445, 465 to 468, 520 and 521 of 1930.

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*Public Prosecutor (L. H. Bewes) for the Crown in
Criminal Revision Cases Nos. 445 and 465 to 468 of
1930.*

JUDGMENT.

Criminal Revision Case No. 445 of 1930.

The petitioner seeks to revise an order passed in the course of a summons case by the Sub-Magistrate, Periyakulam. There is no provision in the Code of Criminal Procedure for writing orders in the course of a case, and the Sub-Magistrate would have been well advised to have deferred all writing till after the conclusion of the trial. If the petitioner felt aggrieved, his proper course was to have moved in revision against the issue of summons. But speaking for myself, I should not have thought it advisable for this Court to intervene at that stage. Where a remedy ultimately lies by way of appeal, it is unnecessary for the High Court to move in revision. And if it is argued that the lower Court is clearly acting without jurisdiction, then the short answer is that the party need not concern himself at all about the trial, but can simply appeal if the matter comes to judgment. If, on the other hand, it is not so clear, and it is a moot point whether or not the lower Court has jurisdiction, then that matter should be threshed out fully in both Courts below before it is brought, if necessary, to the High Court. Therefore, if this petition had come before me for admission, I should have dismissed it out of hand. I have only considered it because its admission was allowed, and the petitioner after incurring the cost of printing has brought the matter up ready for hearing.

The President of the District Board, Madura, complains against the petitioner for constructing a

building on a road vested in the Board. No section is mentioned. Attached to the complaint was a notice sent by the President of the District Board to the petitioner and apparently he is prosecuted for not obeying that notice by removing the encroachment, in which case it would be a complaint under section 220 of the Madras Local Boards Act.

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Apparently the road in question is vested in a Union under section 30. The statement in the complaint that the road vested in the District Board seems to have been a deliberate misstatement of fact, because when the petitioner pleaded that the prosecution was without jurisdiction, the President of the District Board disclosed a cause of action of which he must have been aware when he launched the prosecution, but which he chose entirely to conceal. It appears that the Union was requested to move in the matter, and declined. Thereupon the President of the District Board acted under section 42 (b) and assumed the function of the Union Board. This may be done under section 41 if the Board has made default in performing any duty imposed upon it by statute.

The President of a Local Board may require the owner of any premises to remove an obstruction under section 159, but the only duty imposed upon him under that section is to exercise his discretion in the matter. The Act does not lay down that he must remove any encroachment; and if, as in this case, he elect not to serve a notice, it cannot be said that he has made default in performing his duty. Matters of discretion are never considered to be mandatory, *cf.*, Volume 10, Halsbury's Laws of England, paragraph 170.

It must be found therefore that the President of the District Board had no authority to serve a notice under section 159 in respect of a road not vested in that

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Board, or to prosecute for the failure to comply with that notice.

The petition is allowed and the complaint dismissed.

A similar order is passed in Criminal Revision Cases Nos. 465, 466, 467, 468, 520 and 521 of 1930.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Jackson.

1930,
December 19.

GOPAL NAICK AND SIX OTHERS (ACCUSED NOS. 1 TO 5,
7 AND 8), PETITIONERS,

v.

ALAGIRISAMI NAICK (COMPLAINANT), RESPONDENT.*

*Code of Criminal Procedure (V of 1898), ss. 156 and 202—
Police receiving information in complaint forwarded for
enquiry under sec. 202—Whether can investigate under sec.
156.*

The police on receiving information in a complaint forwarded for inquiry under section 202 of the Code of Criminal Procedure (V of 1898) can investigate under section 156 of the Code.

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, Koilpatti, dated 6th March 1930, and passed in Criminal Appeal No. 6 of 1930 preferred against the Judgment of the Court of the Second-class Magistrate of Sankaranainarkoil in Criminal Case No. 596 of 1929.

The complainant (respondent) presented a complaint to the Subdivisional Magistrate of Koilpatti stating

* Criminal Revision Case No. 367 of 1930.