APPELLATE CRIMINAL—FULL BENCH.

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

1930, April 15.

POLUR REDDI (COMPLAINANT), PETITIONER,

v.

MUNISWAMI REDDI AND SEVEN OTHERS (ACCUSED), RESPONDENTS.*

Code of Criminal Procedure, 1898, *sec.* 346 (1) *and* (2)—*Case submitted to magistrate under sec.* 346 (1)—*Magistrate of opinion that evidence disclosed offence properly triable by magistrate submitting case—Jurisdiction of magistrate under sec.* 346 (2) *to refer case back to magistrate submitting.*

If a magistrate to whom a case is submitted under section 346 (1) of the Code of Criminal Procedure is of opinion that the evidence disclosed an offence properly triable by the magistrate who submitted the case, he has jurisdiction under section 346 (2) of the Code to refer the case back to the magistrate who originally submitted the case.

In re Kottur Hampanna, (1922) I.L.R. 45 Mad. 846, considered.

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 District Magistrate of Vellore, dated 25th June 1929, and made in Criminal Miscellaneous Petition No. 61 of 1929 (C.C. No. 56 of 1929 on the file of the Joint Magistrate, Tiruppattur).

This Criminal Revision Petition came on for hearing in the first instance before JACKSON J., who was of opinion that certain observations in *In re Kottur Hampanna*(1) cited before his Lordship should be scrutinized by a

* Criminal Revision Case No. 833 of 1929.

(1) (1922) I.L.R. 45 Mad. 846.

Full Bench and directed that the matter should be placed before the Chief Justice for orders. An order was thereupon made directing that the case be heard by a Full Bench.

S. T. Srinivasa Gopala Chari for petitioner.

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

No one appeared for respondent.

The JUDGMENT of the Court was delivered by

BEASLEY C.J.—This case comes before us on a reference made by our learned brother JACKSON J.

The facts of the case are that a complaint was made against eight persons on a charge of dacoity and came before the Second-class Sub-Magistrate of Tirupattur. The Sub-Magistrate thought that there was no basis for that charge; but, as of the eight persons accused before him one was alleged to have been armed with a stick and a deadly weapon, he thought that the charge was one under section 148 of the Indian Penal Code, namely, rioting armed with deadly weapons, and accordingly sent the case on under section 346 (1) of the Criminal Procedure Code to the Joint First-class Magistrate for disposal. The Joint First-class Magistrate, after going into the case, differed from the view taken by the Second-class Sub-Magistrate and thought that the evidence disclosed that the accused might be guilty of some lesser offence. In dealing with the matter he pointed out that the fifth accused, who was the only accused stated to have been there armed with deadly weapons and having taken part in the riot, was merely a spectator and took no part whatever in the rioting, and dismissed the complaint against him. He referred the case back, under section 346 (2), Criminal Procedure Code, to the Second-class Magistrate on the 30th of May 1929. The complainant in the case feeling aggrieved at this order preferred a revision petition to

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the District Magistrate, and he dismissed it, as he came to the conclusion that the case had been properly dealt with by the Joint Magistrate. Against this order the complainant presented a revision petition to the High Court. JACKSON J., before whom it came, whilst strongly holding the view that the Joint First-class Magistrate was acting within his jurisdiction when he referred the case back to the Second-class Sub-Magistrate, felt himself very much embarrassed by a decision in *In re Kottur Hampanna*(1). This decision he took to be one holding that the question of jurisdiction is irrevocably fixed by the lower Court when it submits the case under section 346 (1) to the superior Magistrate. Section 346 (2) reads as follows:—

> "The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial."

If our learned brother JACKSON J. is right in his interpretation of the judgment in *In re Kottur Hampanna*(1), then we are clearly of the view that that case was wrongly decided. But, first of all, we have got to see whether the interpretation placed upon that judgment by our learned brother is correct or not. He has taken the last paragraph of that judgment on page 848 to mean that the Magistrate therein referred to is the Magistrate who makes the submission under section 346 (1) and not the Magistrate who refers the case under section 346 (2). In that view of the judgment, that case does decide that it is the charge which the Magistrate who submits the case under section 346 (1) thinks is the right one that the Magistrate to whom he submits the case has to deal with and that charge alone. He has got to try it and dispose of it himself or commit the accused for trial. If that is the correct understanding

(1) (1922) I.L.R. 45 Mad. 846.

of that judgment, then, as before stated, we are clearly of the opinion that that judgment is wrong. Sub-section (2) to section 346 is perfectly clear, definite and wide, and the Magistrate to whom the case is submitted has got to do three things ; he has either got to try the case himself, or after having heard it to a certain point, refer it to any Magistrate subordinate to him who has got jurisdiction to try the case, or to commit the accused for trial. We think that that is really what was meant in *In re Kottur Hampanna*(1) and that the Magistrate therein referred to is the Magistrate making a reference under section 346 (2). Although the section alone is referred to and no sub-sections are referred to, we think, having regard to the facts of the case and the observations made at page 847 that the Magistrate to whom the case had been submitted was intended to be referred to. At page 847 it is stated as follows:—

"It may be urged that the Sub-Magistrate, who sent up the case, was subordinate to the Subdivisional Magistrate and that his order was in effect a reference to him. If so, the reference should have been made explicitly and with some distinct indication of what action the Sub-Magistrate was to take, not with an obscure injunction, which could afford no real guidance."

What happened in that case was that the First-class Subdivisional Magistrate to whom the case had been submitted by the Sub-Magistrate made an order as follows:— "The Subdivisional Magistrate declines to transfer the case to the file of another Sub-Magistrate." And then later on "As regards the section under which the offence, if proved, is likely to fall, the Sub-Magistrate is requested to study the commentary carefully under section 379 of the Indian Penal Code." In the opinion of the Bench that was not the proper way to deal with the case submitted to him. Reference was made in that

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case to two unreported cases, *Queen Empress* v. *Fakira* (1), and *Queen Empress* v. *Purushotam*(2), as authority for the position that a superior Magistrate cannot simply return a case to the Subordinate Magistrate from whom it comes but must refer it to some other Magistrate or dispose of it himself. But these cases on examination do not seem to go to that length. If they do, we are clearly of the opinion that those cases were wrongly decided, because the terms of sub-section (2) to section 346 are quite clear and sufficiently wide to embrace a reference back of the case to the Magistrate who originally submitted it. In our view, therefore, there is no warrant for saying that the Magistrate who acted under section 346 (2) had no jurisdiction in this case so to act.

The question argued before our learned brother JACKSON J. was merely the question of jurisdiction. No argument was addressed to him upon the merits. We have heard a brief argument upon the merits of the case, and in view of the order of the Magistrate in which he states that the evidence points to the fact that the fifth accused, who is the only person alleged to have been present armed with deadly weapons, was merely a spectator, we think that the view he took with regard to the offence possibly committed by the accused persons was correct. As soon as the fifth accused was eliminated from the charge, obviously no charge against the other accused persons of rioting armed with deadly weapons could possibly lie.

In view of the observations we have made, the petition must be dismissed.

B.C.S.

(1) (1890) Ratanlal's Unreported Cases 499.
(2) (1891) Ratanlal's Unreported Cases 554.