

APPELLATE CRIMINAL—FULL BENCH.

Before Mr. Justice Waller, Mr. Justice Krishnan Pandalai
and Mr. Justice Curgenvven.

1931,
October 8.

IN RE PONNUSWAMI GOUNDAN AND ANOTHER
(ACCUSED 2 AND 3), PETITIONERS.*

Code of Criminal Procedure (Act V of 1898), sec. 203—Dismissal of complaint under—No bar to any magistrate taking cognizance of a subsequent complaint.

When a complaint is dismissed under section 203 of the Code of Criminal Procedure, any magistrate having co-ordinate jurisdiction can take cognizance of a subsequent complaint on the same facts, notwithstanding that the order of dismissal has not been set aside.

Emperor v. Chinna Kaliappa Gounden, (1905) I.L.R. 29 Mad. 126 (F.B.), followed.

PETITION praying that, in the circumstances stated therein, the High Court will be pleased to quash the proceedings in Preliminary Register Case No. 3 of 1931, on the file of the Court of the Second-class Magistrate of Perundurai as without jurisdiction, so far as the petitioners are concerned.

This petition coming on for hearing the Court (WALLER and KRISHNAN PANDALAI JJ.) made the following

ORDER OF REFERENCE TO A FULL BENCH:—

We think that the question raised in this case should be decided by a Full Bench. It is this—whether, a complaint having been dismissed by a Sub-divisional Magistrate under section 203 of the Code of Criminal Procedure, a Sub-Magistrate has jurisdiction to entertain a charge-sheet founded on a subsequent complaint, the order of dismissal not having been set aside. The ruling in *Emperor v. Chinna Kaliappa Gounden*(1) is limited expressly to the case of the same magistrate re-entertaining a complaint. *Mahomed Abdul*

* Criminal Miscellaneous Petition No. 324 of 1931.

(1) (1905) I.L.R. 29 Mad. 126 (F.B.).

Mennan v. Panduranga Row(1) is a case of different Magistrates, though the headnote states the decision in wider terms; see *Grish Chunder Roy v. Dwarka Duss Agarwallah*(2) and *Queen Empress v. Adam Khan*(3). But the decisions are not uniform—vide *In re Mahadev Laxman*(4). It is desirable, though a case of this kind must be of very rare occurrence, that the question should be authoritatively settled. We therefore refer the above question for decision by a Full Bench.

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ON THIS REFERENCE :

K. S. Jayarama Ayyar (with him *A. Venkatakrishna Ayyar*) for petitioners.

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

Cur. adv. vult.

The OPINION of the Court was delivered by

WALLER J.—The petitioners are two out of five persons who have been charge-sheeted by the police before the Sub-Magistrate of Perundurai for offences under sections 419 and 467, Indian Penal Code and section 82 of the Registration Act. A sale-deed had been presented for registration to the Sub-Registrar of Kunnathur on 12th January this year. It purported to have been executed by one Kanni Moopan and by his mother on behalf of his minor brother and was registered the next day. On 28th January Kanni Moopan complained to the Sub-Registrar that he had not executed the deed and that there had been false personation. The Sub-Registrar forwarded his complaint to the District Registrar, who on 2nd February directed the Sub-Registrar to advise Kanni Moopan to complain to a magistrate. The next day, somewhat inconsistently, he sent a copy of the Sub-Registrar's letter and of the complaint to the Police Inspector at Erode, who on 4th

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(1) (1904) I.L.R. 28 Mad. 255.

(2) (1897) I.L.R. 24 Calo. 528.

(3) (1899) I.L.R. 22 All. 106.

(4) A.I.R. 1925 Bom. 258.

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or 5th ordered the case to be registered for investigation. In the meantime, Kanni Moopan, in compliance with the advice given him on 2nd, had lodged a complaint before the Sub-divisional Magistrate, Erode, who proceeded to dismiss it summarily, mainly on the surprising ground that the complainant knew nothing about the contents of the sale-deed in question. As his complaint was that he had not signed the deed and that some one had personated him before the Sub-Registrar, his ignorance of its contents was nothing more than was to be expected. On 22nd the police put in their charge-sheet, which was taken on file by the Sub-Magistrate of Perundurai. In May the case was adjourned at the request of the petitioners on the allegation that they were going to move the High Court for a transfer. On 15th May they informed the Court that they had so moved. That was untrue. What they had done was to move the High Court to quash the proceedings on the ground that the Sub-Magistrate had no jurisdiction to entertain the charge-sheet, the Sub-divisional Magistrate's order dismissing Kanni Moopan's complaint not having been set aside. JACKSON J. referred the application to a Bench, which, in its turn, referred it to a Full Bench for decision of the following question:—

Whether, a complaint having been dismissed by a Sub-divisional Magistrate under section 203 of the Code of Criminal Procedure, a Sub-Magistrate has jurisdiction to entertain a charge-sheet founded on a subsequent complaint, the order of dismissal not having been set aside.

The leading case on the point, as far as this Court is concerned, is *Emperor v. Chinna Kaliappa Goundan*(1). That was, of course, a case in which a dismissed complaint was re-entertained by the same magistrate as

(1) (1905) I.L.R. 29 Mad. 126 (F.B.).

had dismissed it and the majority of the Full Bench held that he had jurisdiction to do so. It had previously been decided in *Mahomed Abdul Mennan v. Panduranga Row*(1) that a magistrate had no power to entertain a complaint that had already been dismissed by another magistrate of co-ordinate jurisdiction. In the case we are now considering the prior dismissal was by a magistrate of superior jurisdiction, but that, in our opinion, makes no difference in principle—apart from the fact that, as far as the subject-matter of the particular complaint was concerned, their jurisdiction was co-ordinate. A very considerable number of rulings has been cited before us, to most of which we consider it unnecessary to refer. What, in effect, Mr. Jayarama Ayyar has pressed us to say is that the case, *Emperor v. Chinna Kaliappa Gounden*(2), was wrongly decided. We see no reason to do anything of the sort. It is curious, no doubt, that the Code, while empowering superior Courts to direct further enquiry into complaints that have been dismissed under section 203 which would seem to supply a complete and adequate remedy against improper dismissal should, at the same time, allow a complainant and a magistrate to dispense with that formality and permit the one to present and the other to entertain a complaint on the same facts as a complaint that has already been presented and dismissed. But that is not our concern. We have to interpret the Code as it stands and not in the light of any anomaly to which its wording may give rise. Something has been sought to be made out of the difference between section 147 of the Code of 1872 and section 403 of the present Code. As to that, we are of opinion that the difference is one merely of language and not of

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(1) (1904) I.L.R., 28 Mad. 255.

(2) (1905) I.L.R., 29 Mad. 126 (F.B.).

PONNUSWAMI substance. Section 147 of the old Code provided that
 GOUNDAN, "the dismissal of a complaint shall not prevent
 In re. subsequent proceedings." There is no similar provision
 WALLER J. in the present Code and it is argued that the absence
 of such a provision leads to the inference that the dismissal
 of a complaint is now a bar to further proceedings until it is
 set aside. That is not, in our opinion, the proper inference
 from the language of section 403. The section begins by
 laying down that a man who has been tried for an offence
 and convicted or acquitted of it shall not be liable to be
 tried again for the same offence and it ends with the
 explanation that the dismissal of a complaint is not an
 acquittal for the purposes of the section. That, however,
 is not all; there is in regard to an acquittal a qualification
 which is not to be found in the explanation. It is that
 an acquittal to be a bar to a second trial must still remain
 in force. In regard to the dismissal of a complaint, it
 is not stated that the order of dismissal is a bar until it
 is set aside. The only meaning we can put on the wording
 of the explanation is that an order dismissing a complaint
 is not an acquittal, in the sense that it bars a further
 enquiry until it has been set aside. That being so, we
 must follow the ruling in *Emperor v. Chinna Kaliappa
 Gounden*(1), which, in our opinion, really covers the present
 case. There is, it seems to us, no difference in principle
 between the entertainment of a second complaint by the
 same or by a different magistrate. That was pointed out
 by MACLEAN C.J. in *Queen-Empress v. Dolegobind Dass*(2)
 whose opinion was approved by PHILLIPS J. in *Pompalli
 Subba Reddi v. Chaduboyigari Kamal Saib*(3).

K.N.G.

(1) (1905) I.L.R. 29 Mad. 123 (F.B.).

(2) (1900) I.L.R. 28 Calc. 211.

(3) (1915) 7 Cr. L. Rev. 255.