

## APPELLATE CRIMINAL—FULL BENCH.

*Before Sir Owen Beasley, Kt., Chief Justice, Mr. Justice Bardswell and Mr. Justice Burn.*

1933,  
May 11.

IN RE V. M. RATHNAVELU AND TWO OTHERS (ACCUSED),  
PETITIONERS.\*

*Code of Criminal Procedure (Act V of 1898), sec. 403—Acquittal—Judgment of, by Magistrate having no territorial jurisdiction—Bar if, to fresh complaint on same facts filed before Magistrate of Co-ordinate jurisdiction—Sec. 531—Effect of.*

A judgment of acquittal passed by a Magistrate cannot, by reason of the provisions of section 531, Criminal Procedure Code, be set aside on the ground of want of territorial jurisdiction, even by the High Court, in the absence of any suggestion that any failure of justice has occurred by reason of the trial having been held in a wrong area.

*A fortiori* such a judgment cannot be ignored by another Magistrate who is not a tribunal superior to the Magistrate who passed the judgment of acquittal.

Where the Subdivisional Magistrate of Vellore, who had no territorial jurisdiction to try a case, tried it and acquitted the accused,

*held*, accordingly, that a fresh complaint filed before the Chief Presidency Magistrate of Madras on the same facts was barred by section 403, Criminal Procedure Code.

*Emperor v. Doraiswamy Mudali*, (1906) I.L.R. 30 Mad. 94, approved.

*Shanker Tulsiram v. Kundlik Anyabu*, (1928) I.L.R. 53 Bom. 69, dissented from.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the order of the Chief Presidency Magistrate of the Court of the Presidency Magistrates, Egmore,

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\* Criminal Revision Cases Nos. 15 and 16 of 1933.

Madras, dated the 7th day of November 1932 and passed in Calendar Case Nos. 30672 and 30673 of 1931. BATHNAVELU,  
In re.

*K. S. Jayarama Ayyar and G. Gopalaswami* for petitioners.

*Crown Prosecutor (K. P. M. Menon)* for the Crown.

*Cur. adv. vult.*

The JUDGMENT of the Court was delivered by  
BURN J.—Two persons were charged for cheating (section 420, Indian Penal Code) in two cases and were tried by the Subdivisional Magistrate of Vellore. There was a dispute before the Magistrate on the question whether he had jurisdiction to try the case. The accused persons contended that he had not, and that the cases ought to be tried in Madras. The complainant contended that he had, and the learned Subdivisional Magistrate held that he had jurisdiction, proceeded with the trial, and acquitted both the accused. BURN J.

The complainant filed revision petitions in this Court against the orders of acquittal. LAKSHMANA RAO J. dismissed the revision petitions, observing that the lower Court, i.e., the Subdivisional Magistrate, Vellore, “had clearly no jurisdiction to try the case”, and that “all his remarks relating to the merits of the case must be regarded as mere *obiter dicta*.”

Then the complainant filed fresh complaints before the Chief Presidency Magistrate on the same facts. The Chief Presidency Magistrate dismissed the complaints on 17th December 1931 accepting the plea of the accused that they had already been tried and acquitted, and that a petition to revise the orders of acquittal had been dismissed.

Then the complainant came to this Court with revision petitions against the orders of the Chief Presidency Magistrate dismissing his complaints. Those cases (Criminal Revision Cases Nos. 461 and 462 of 1932)

RATHNAVELU, were laid by direction of RAMESAM J. before a Bench and  
In re.  
 BURN J. were disposed of by JACKSON and MOCKETT JJ. The  
 order was pronounced by JACKSON J. and is to this  
 effect :

“ An accused person can only plead ‘ *autrefois acquit* ’ under section 403 of the Code of Criminal Procedure if the acquittal set up is by a Court of competent jurisdiction. A Court without territorial jurisdiction is not a Court of competent jurisdiction.

That is laid down in *Shankar Tulsiram v. Kundlik Anyaba*(1) and it is difficult to see how it could be held otherwise.

No one is applying to have the order of acquittal set aside under section 531, and there is no need to consider that section.

Whether or no there was territorial jurisdiction is a matter that has not been decided after hearing both parties, and the Chief Presidency Magistrate can decide that fact. His order is set aside and he is directed to proceed.”

Thereupon the Chief Presidency Magistrate appears to have taken some further evidence and decided that the Vellore Magistrate had no territorial jurisdiction. He therefore ordered the third Presidency Magistrate to dispose of both the cases according to law.

From these orders the present revision petitions have been brought.

It is clear that the attention of JACKSON and MOCKETT JJ. was not drawn to the case of *Emperor v. Doraiswamy Mudali*(2) in which a Bench of this Court took a different view from that of the Bombay High Court in *Shankar Tulsiram v. Kundlik Anyaba*(1). Section 531, Criminal Procedure Code, is strictly applicable to the facts of these cases. The only defect in the jurisdiction of the Vellore Subdivisional Magistrate, which is alleged, is a want of territorial jurisdiction.

(1) (1925) I.L.R., 53 Bom. 69.

(2) (1906) I.L.R. 30 Mad. 24.

Section 531, Criminal Procedure Code, says that no finding of a Criminal Court shall be set aside merely because the trial was held in a wrong area. . It follows that the judgments of acquittal passed by the Sub-divisional Magistrate, Vellore, could not have been set aside on the ground of want of territorial jurisdiction, even by this Court (since there is no suggestion that any failure of justice has occurred by reason of the trial having been held in Vellore rather than in Madras). *A fortiori* it follows that those judgments cannot be ignored by the Presidency Magistrates of Madras who are not tribunals superior to the Subdivisional Magistrate, Vellore.

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*In re.*  
BURN J.

We therefore hold that the complaints to the learned Chief Presidency Magistrate in these cases were barred by section 403, Criminal Procedure Code. We set aside his order directing the third Presidency Magistrate to dispose of them according to law, and we restore his order of 17th December 1931 dismissing both complaints.

K.W.R.

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