APPELLATE CRIMINAL.

Before Mr. Justice Jackson and Mr. Justice Mockett.

IN RE CHILUKURI RAMAYYA (ACCUSED-PETITIONER), PETITIONER. * 1932, July 26.

Code of Criminal Procedure (Act V of 1898), sec. 476 (1)—Complaint under—Necessity for the Court to record a finding that it is expedient in the interests of justice.

The Court making a complaint under section 476 (1) of the Code of Criminal Procedure should record a finding that it is expedient in the interests of justice that an inquiry should be made; and should not leave this to be inferred.

Namberumal Chetti v. *Nainiappa Mudali*, (1930) I.L.R. 54 Mad. 331, distinguished.

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 Kistna in Criminal Miscellaneous Petition No. 13 of 1932 presented to set aside the order of the Court of the Subdivisional Magistrate of Gudivada in Criminal Miscellaneous Petition No. 12 of 1931.

K. Kameswara Rao and *C. Krishnachandra Mouleswar* for petitioner.

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

The JUDGMENT of the Court was delivered by

JACKSON J.—The Subdivisional Magistrate of Gudivada passed an order purporting to be under sections 195 (1) (*b*) and 476 of the Code of Criminal Procedure that the present petitioner should be prosecuted for perjury under section 193, Indian Penal Code. He accordingly forwarded the records to the District Magistrate, Kistna, for taking action against the petitioner under the above JACKSON J.

* Criminal Revision Case No. 480 of 1932.

CHILUKURI RAMAYYA, *In re.*

JACKSON J.

section. It is hardly the procedure contemplated in the Code as revised in 1923 and the Subdivisional Magistrate ought to have complained under section 476, a point which was taken up on appeal to the District Magistrate who found that the Subdivisional Magistrate's proceedings were practically a complaint and that the petitioner had not been in any way prejudiced. The point which is now taken in revision against the District Magistrate's order is not quite the same. It is now complained that the Subdivisional Magistrate erred in not recording a precise finding that it was expedient in the interests of justice that an enquiry should be made into the offence. It might be possible to argue, when the Subdivisional Magistrate records in these terms : "Further I find that he perjured himself on an important fact touching the issue in question regarding possession. I therefore consider etc.", that he was in effect giving his opinion that a prosecution was expedient in the interests of justice. But considering the clear language of the Code we are not disposed to admit any argument of that sort. The Code lays down so as to leave no room for any doubt that the Court should record a finding that it is expedient in the interests of justice that an inquiry should be made and therefore Courts will be well advised always to make a record to that effect if that is their opinion ; because most regrettable delays and waste of time sometimes arise by putting the superior Courts to the task of discovering whether they mean something which they have not written. We therefore allow the petition and remit these proceedings to the Subdivisional Magistrate of Gudivada for such action as he deems necessary in the light of the above remarks. If he wishes to regularise the complaint at this stage there is no legal objection to his doing so.

In regard to the case law on the subject it may be noted that our opinion is affirmed by two Judges of this Court in *Chaduvula Munuswami Naidu* v. *Emperor*(1), *Yerneni Satyanarayana, In re*(2); and also in *Surendra Nath Jana* v. *Kumeda Charan Misra*(3). The ruling in *Namberumal Chetti* v. *Nainiappa Mudali*(4) was based on the special wording of the order then in question. The learned Judges there observed that the order was very detailed and comprehensive.

K.N.G.

APPELLATE CRIMINAL—FULL BENCH.

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

IN RE M. MOUNAGURUSWAMI AND FIFTEEN OTHERS (ACCUSED), PETITIONERS.*

1932, November 24.

Criminal trial—Counter cases—Proper procedure.

No hard and fast rule can be laid down with regard to the procedure to be adopted in the trial of counter cases by Criminal Courts. There is nothing irregular in a Judge trying each case to a conclusion before different assessors and afterwards pronouncing judgment in both so long as he tries the one quite independently of the facts in the other. It is necessary (1) that the trial must be separate, i.e., before different assessors and separate judgments delivered and (2) that the conclusions in each case must be founded on, and only on, the evidence in each case.

If the Judge considers himself unable to detach himself from extraneous considerations a transfer may be necessary to deliver the Judge from this embarrassment.

Krishna Pannadi v. *Emperor*, (1929) M.W.N. 883; (1929) 58 M.L.J. 352, explained. *Krishtamma* v. *Emperor*, (1929)

(1) A.I.R. 1928 Mad. 783. (2) (1928) 28 L.W. 774.
(3) (1930) 51 C.L.J. 208. (4) (1930) I.L.R. 54 Mad. 331.
* Criminal Miscellaneous Petition No. 1014 of 1932.