APPELLATE CRIMINAL.

Before Mr. Justice Pakenham Walsh.

PITCHAI (RESPONDENT IN CRL. R.C. No. 285 OF 1932), PETITIONER,

1932, April 27.

v.

M. M. C. MUHAMMAD ATHAM SAMMATTI AND THIRTEEN OTHERS, RESPONDENTS.*

Code of Criminal Procedure (Act V of 1898), *sec.* 144—*Order under—Stay of—High Court's power of—Application under sec.* 144 (4) *not filed—Effect of—Sec.* 561-*A—Inherent power under—Landlord's right to evict lessee does not necessarily give jurisdiction under sec.* 144.

The High Court has power to stay execution of an order, positive or negative, passed under section 144 of the Code of Criminal Procedure.

Failure to apply under section 144 (4) for the rescission or alteration of the order under section 144 is no bar to the filing of a revision petition against it. The jurisdiction conferred by section 144 (4) is neither appellate nor revisional jurisdiction but a special jurisdiction conferred by a special provision of the statute.

The fact that under the terms of a lease the lessees are liable to eviction in a Civil Court does not entitle the landlord to an order against them under section 144 unless by no other means can a serious breach of the peace be prevented.

PETITION praying that the High Court may be pleased to issue an order vacating the order of the High Court dated 19th April 1932 and made in Criminal Miscellaneous Petition No. 270 of 1932 directing the suspension of the order of the Subdivisional Magistrate of Ramnad in Miscellaneous Case No. 20 of 1932.

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

B. Sitarama Rao for respondents.

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* Criminal Miscellaneous Petition No. 295 of 1932.

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JUDGMENT.

This is an application to this Court to vacate the order, dated 19th April 1932, in Criminal Miscellaneous Petition No. 270 of 1932 by which the order of the Subdivisional Magistrate of Ramnad under section 144 of the Code of Criminal Procedure was suspended in its operation—the first ground taken is that this Court had no power to suspend the order. The argument adopted is that powers of revision are exercised under section 435 (1) of the Code of Criminal Procedure which only applies to suspension of execution of imprisonment or fine or under section 439 of the Code of Criminal Procedure. Mr. Jayarama Ayyar has taken me through various sections of the Code mentioned in section 439—sections 423, 426, 427, 428 and 338—none of which he argues applies to this case, and I agree. Now there are certainly sections of the Code such as section 188 under which execution of orders passed therein can be suspended, but they do not fall under any of the sections mentioned in section 439 of the Code of Criminal Procedure. No doubt section 520 specially provides for stay of execution under sections 517, 518 and 519. Mr. Jayarama Ayyar argued that such orders as are positive and not negative would come under section 426 and he even argues that a positive order under section 144 would fall under it. That section begins with the words, "Pending any appeal by a convicted person". These words govern the whole section. It therefore follows, in my opinion, that where there is no appeal pending by a convicted person the section cannot come into force; and it cannot be invoked. It seems therefore obvious that since there are orders execution of which can be stayed by this Court which do not fall under section 439 read with section 426 they are dealt with either under section 561-A in the exercise of its inherent powers or

under section 107 of the Government of India Act. Thus there is no section (apart from section 561-A) in the Code of Criminal Procedure which enables the High Court to stay criminal proceedings. It is not correct to say that therefore any power of stay which cannot be found within the four corners of the Code cannot be exercised if we assume, as Mr. Jayarama Ayyar does, that section 561-A cannot be invoked. In this connexion *Chockalingam Ambalam* v. *Emperor*(1) may be referred to. I have been shown no case where it has been held that this Court has no power of stay of execution of an order, positive or negative, passed under section 144. *Marudayya Thevar* v. *Shanmugasundara Thevar*(2) was quoted. This was under section 145 and it related to the appointment of a receiver. I am doubtful whether the analogy as to the power of the Court to appoint a receiver under section 145 can be carried so far as to prohibit the Court staying execution of an order under section 144. If that reasoning is carried further, it will equally prevent the Court staying positive orders under section 144, which Mr. Jayarama Ayyar at the end of his argument admitted the Court could do.

The second argument is that no revision petition lies to this Court as the parties could have gone to the District Magistrate under section 144 who has power to rescind or alter an order under section 144 (4). It is argued that these powers of the District Magistrate are appellate powers and therefore under section 439 (5) no appeal having been made to him no revision petition to this Court can be entertained. Several cases have been quoted on the analogy of the old section 195 (7) but I do not think they have any bearing on this case, for the simple reason that that section did not empower

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(1) (1927) M.W.N. 716. (2) (1925) 49 M.L.J. 593.

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the Court to revise or change an order passed by itself which section 144 (4) does, and all the cases quoted proceed on the footing that the appellate or revising Court is superior to the Court whose order is sought to be appealed against or revised. The peculiarity of section 144 (4) is that it enables the magistrate who passed the order to rescind or alter it. His power therefore of a superior magistrate when he proceeds to do the same thing must be similar in its essence. It appears to me, therefore, that nothing can be gathered from cases which discuss whether revisional and appellate powers are the same or different things. Here we are dealing with a peculiar section, namely section 144 (4), conferring a jurisdiction upon a magistrate which, whether even if it can be called appellate or revisional, cannot be so called in the ordinary sense of those words, namely, of a superior Court dealing with an inferior one. There is one direct decision on the point, and it is the only one which has been quoted to me, namely, *Saturhan Das* v. *Makhan Das*(1). It was there held that the jurisdiction conferred by section 144 (4) of the Code of Criminal Procedure upon a magistrate to rescind or alter an order made under the section by himself or any magistrate subordinate to him or by his predecessor in office is neither appellate nor revisional jurisdiction; it is a special jurisdiction conferred by a special provision of the statute. Therefore in my opinion this argument that a revision petition cannot be filed to this Court must be rejected. I should not, however, be understood as in any way encouraging direct applications to this Court when there is some magistrate who can alter or rescind the order, but this criminal revision petition has already been admitted in

(1) (1921) 72 I.C. 171.

this Court, and I am not prepared to hold that it could not be filed here.

On the merits of the present petition I propose to say very little because the main question as to whether the agreement between the present petitioner and the counter-petitioners is a lease or a licence is one which will more properly come up in deciding the criminal revision petition itself. But it seems to me perfectly clear that the view which the learned Magistrate took in passing the order was that this was an ordinary lease and that since the parties under the lease had to vacate as they did not pay their rent within the specified time the petitioner before him was entitled to have an order under section 144, excluding the counter-petitioners before him from the site. A few sentences of the order may be quoted :

> "The principal contention of the counter-petitioners is that the clause in the rajinama that the defaulters should forfeit the lease is not intended to operate but is only introduced *in terrorem* and that it is not valid in law even otherwise."

Then he says:

> "In a nutshell their case is that even though they have violated the condition of the rajinama with regard to the payment of the dues to the proprietor of the lands the lease is subsisting and that they have every right to be on the lands in question."

He proceeds then to say:

> "The terms of the rajinama are quite clear that in default of payment of the dues to the proprietor of the lands even after the expiry of the one month's days of grace, with interest thereon at twelve per cent per annum, the counter-petitioners shall forfeit their subsequent right of the fishing lease on the lands."

It may be noted that in the compromise petition liberty to build houses, etc., was granted and the petitioners could remove them at the end of the lease. Nowhere in the order so far as I can see does the learned

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Magistrate appear for a moment to regard the compromise as a licence and not as a lease. If he viewed it as a lease, he was not correct in passing the order evicting the petitioners from it, even though liable to eviction in a Civil Court unless by no other means could a serious breach of the peace be prevented. It was for the landlord, in the view taken by the lower Court, to evict them by civil process. It was for that reason, apart altogether from the question as to what the compromise really meant, that I considered this order was *prima facie* wrong and should be suspended. After reading the affidavits on both sides I do not see sufficient reason to vacate my order dated 19th April 1932, but I wish to make it clear that I am in no way deciding the question whether the agreement is a licence or a lease.

K.N.G.

APPELLATE CRIMINAL.

Before Mr. Justice Jackson and Mr. Justice Mockett.

1932,
July 25.

KOVURU SUBBAYYA AND TWO OTHERS (ACCUSED), PETITIONERS,

v.

PETA VEERAYA (COMPLAINANT), RESPONDENT.*

Code of Criminal Procedure (Act V of 1898), *sec.* 162—*Applicability of—Statements to police during investigation of an offence other than the one for which the accused is under trial.*

Where an accused person wishes to cross-examine a prosecution witness with regard to statements made by that witness to the police during the investigation of an offence other than the

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* Criminal Revision Case No. 214 of 1932.