NARAPPA NAICKEN v. GOVINDARAJA NAICKEN.

JACKSON J.

(*see* page 92). It may be questionable whether the facts of these two cases run altogether on all fours; but that is not a question which we need discuss. And, of course, an order after judgment has been passed is not the same as an order before the suit. In *Boissiere* v. *Brockner*(1) it was held that an appearance in the foreign Court before the suit in order to protest against its jurisdiction involves the defendant in the necessity of submitting to its jurisdiction if the plea to the jurisdiction should be disallowed. But appearance after the suit is decreed need not involve any such necessity. It is not as though after refusing to set aside the *ex parte* decree the Court proceeded to pass a fresh decree.

The appeal is dismissed with costs.

A.S.V.

APPELLATE CRIMINAL.

Before Mr. Justice Bardswell.

1934, February 28.

THE PUBLIC PROSECUTOR, APPELLANT,

v.

T. P. SHANMUGA NADAR AND ANOTHER (ACCUSED), RESPONDENTS.*

Criminal Procedure Code (*Act V of* 1898), *sec.* 192 (1)—*Transfer—Magistrate empowered to—Can do so at any stage of case.*

A Sub-Divisional Magistrate to whom a private complaint of offences under sections 485 and 486, Indian Penal Code, was made, after hearing the prosecution evidence found that a *prima facie* case was made out only of an offence under section 482,

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(1) (1889) 6 T.L.R. 85.

* Criminal Appeal No. 598 of 1933.

Indian Penal Code, and accordingly, after framing a charge under that section, he transferred the case to the file of a Second-class Magistrate.

Held, that the transfer was justified under section 192 (1) of the Criminal Procedure Code (Act V of 1898).

There is nothing in section 192 (1) to justify the restriction that a transfer by a Magistrate empowered under that clause can be made only when he first takes cognizance of a case and that he cannot do so at a later stage.

APPEAL under section 417 of the Code of Criminal Procedure, 1898, against the acquittal of the aforesaid respondents (accused) by the Stationary Sub-Magistrate of Ambasamudram in Calendar Case No. 123 of 1933 on his file.

A. Narasimha Ayyar for Public Prosecutor (*L. H. Bewes*) for the Crown.

Nugent Grant and *K. R. Rangasamy Ayyangar* for respondents.

Cur. adv. vult.

JUDGMENT.

This is an appeal by Government against the acquittal of the two respondents. There was a private complaint made against them to the Joint Magistrate of Shermadevi of offences punishable under sections 485 and 486, Indian Penal Code. The Joint Magistrate after hearing the prosecution witnesses found that a *prima facie* case was made out only of an offence under section 482 which offence is triable by a Second-class Magistrate and so, having framed a charge of an offence punishable under that section, he transferred the case to the file of the Second-class Stationary Sub-Magistrate at Ambasamudram. The Stationary Sub-Magistrate proceeded with the case and acquitted the respondents.

If the transfer could be effected at all it must have been under section 192, Criminal Procedure Code, (clause 1) which runs as follows :—

"Any Chief Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him."

The learned Public Prosecutor argues that the words "for inquiry or trial" are merely put in so far as to cover both warrant and summons cases, that it is permissible for a Magistrate empowered under this clause only to transfer a case when he first takes cognizance of it and that he cannot transfer it at any later stage even though in the matter of a warrant case the stage of trial is not reached till the charge is framed. I cannot see anything in the clause itself which indicates that any such restriction is intended to be made. Nor is any authority shown me for there being such a restriction. The learned Public Prosecutor has referred me to two rulings. One of these is that in *Tota Venkanna and others, In re*(1). In that case a Joint Magistrate enquired into a case that was brought as one of robbery but found that the prosecution evidence could make out only offences punishable under section 353, Indian Penal Code, and section 24 of the Cattle Trespass Act. He therefore transferred it to the file of the Stationary Sub-Magistrate who proceeded to dispose of it from the point at which it reached him without taking evidence afresh. It was held that he acted illegally in so doing ; but clearly the point of the illegality was the fact that, under the law as it was then understood in this Court, it was the

(1) (1900) 2 Weir 152.

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duty of the Sub-Magistrate on the case being transferred to him to take the evidence afresh. This, however, is no longer the law, by reason of clause 3 to section 350. This ruling therefore is not in point. The other case to which I have been referred is *Mahabir Singh* v. *Giribala Dassi*(1). That case too has no application. What it decided is that the provisions of section 192 do not entitle a Magistrate after he has proceeded under section 202, Criminal Procedure Code, to make an order transferring the case for the purpose of being dealt with under section 203 or section 204 without a fresh investigation as contemplated by section 202, Criminal Procedure Code, and that section 192 does not empower him to transfer a case simply for the purpose of considering the report of an investigation under section 202, Criminal Procedure Code, which he has himself ordered. In the absence of any authority to the contrary I must take it that the first clause of section 192 means what it clearly appears to mean and that the action of the Sub-Divisional Magistrate in transferring the case to the file of the Stationary Sub-Magistrate was perfectly correct. There is no other possible ground for interference with the order of acquittal. The appeal is therefore dismissed.

K.W.R.

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(1) (1924) 29 C.W.N. 508.