substance the same matter. Even if the question of law had to be decided otherwise, I would not have been prepared in the circumstances of the case to interfere in revision with the order of the First Class Bench Magistrate's Court. The revision petition is therefore dismissed.

K.W.R.

APPELLATE CRIMINAL.

Before Mr. Justice Curgenven and Mr. Justice Cornish.

MAYANDI NADAR (PROSECUTION WITNESS 1), PETITIONER,

v.

PALA KUDUMBAN AND TWO OTHERS (ACCUSED 2 TO 4), RESPONDENTS.*

1934, October 31.

Criminal Procedure Code (Act V of 1898), ss. 408 and 562—Order under sec. 562—Whether appealable—"Conviction"—Meaning of.

An appeal lies to the Sessions Judge from an order of a First Class Magistrate passed under section 562, Criminal Procedure Code (Act V of 1898).

The word "conviction" in sections 408 and 562 of the Code must be given its ordinary meaning of an adjudication of guilt.

Emperor v. *Hira Lal*, (1924) I.L.R. 46 All. 828, *Bahadur Molla* v. *Ismail*, (1924) I.L.R. 52 Calc. 463, and *Madhav* v. *Emperor*, A.I.R. 1926 Bom. 382, followed.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of

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* Criminal Revision Case No. 540 of 1934.

MAYANDI v. KUDUMBAN.

Session of the Tinnevelly Division, dated the 22nd day of March 1934 and passed in Criminal Appeal No. 13 of 1934, preferred against the judgment of the Court of the Stationary First Class Magistrate of Srivaikuntam, dated the 23rd day of January 1934 and passed in Calendar Case No. 797 of 1933.

K. S. Jayarama Ayyar for *J. S. Vedamanikkam* for petitioner.

P. N. Marthandam Pillai for respondents.

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

Cur. adv. vult.

The ORDER of the Court was delivered by

CURGENVEN J.

CURGENVEN J.—The question raised in this case is whether an order passed by a Court under section 562, Criminal Procedure Code, is appealable. The petitioner was complainant in a case in which four persons were convicted of breaking into a shop at night and committing theft, under sections 457 and 380, Indian Penal Code. The first and second accused were boys aged twelve and fifteen respectively and the Stationary Sub-Magistrate who convicted them released them after due admonition under sub-section (1A) of section 562. The third accused was of mature years and received a fine of Rs. 25. The fourth and last accused was a youth aged seventeen and he was released under section 562 (1) on entering into a bond with one surety. The accused two to four preferred an appeal and the learned Sessions Judge who disposed of it has, we think rightly, held that the release after admonition of the second accused was illegal because sub-section (1A) does not apply to a case of house-breaking and further, that the sentence of fine alone imposed upon the third

accused was illegal because section 457, Indian Penal Code, makes a sentence of imprisonment, with or without fine, compulsory. In the result he set aside the orders of the Court below, thereby acquitting the accused, and left the matter there, considering the case not of sufficient gravity to merit further action.

Mr. Jayarama Ayyar for the petitioner argues that no appeal lay from the orders of the Stationary Sub-Magistrate (who, it may be explained, exercises first class powers) to the Sessions Judge. We may take it that no appeal would lie from the order imposing a fine under section 457, Indian Penal Code, although it was an illegal order, because such an appeal would be excluded by the terms of section 413, Criminal Procedure Code. The question then is whether an order under section 562 is appealable. If it is appealable the other persons convicted at the trial would have a right of appeal under section 415 A.

Under section 404, no appeal lies from any judgment or order except as provided for by the Code, and, under section 408, any person "convicted" on a trial held by a Magistrate of the first class may appeal to the Court of Session, subject to the qualifications as regards minimum sentence contained in sections 413 and 414. Section 562 provides that a first offender dealt with under its provisions must first be "convicted"; and if the word "convicted" is used in the same sense in that section and in section 408, there can be no escape from the conclusion that a person dealt with under section 562 has a right of appeal. The argument that section 423, which defines the powers of an appellate Court in disposing of an

MAYANDI v. KUDUMBAN.

CURGENVEN J.

appeal, does not contain any provision for setting aside an order under section 562 does not, we think, avail to affect that conclusion. The language of section 423 has remained unchanged since the Code of 1882, which contains no provisions similar to those of section 562. It is unnecessary to regard section 423 as an exhaustive statement of the powers of an appellate Court or to hold that an appeal from a conviction can only be entertained when the conviction is accompanied by a sentence. On the other hand, section 408 renders an order made or sentence passed under section 380, Criminal Procedure Code, appealable—an amendment inserted in 1923 probably in consequence of doubts such as arose in *Emperor* v. *Bhimappa*(1)—and it is difficult to see why, if an order under section 380 is appealable, an order under section 562 should not be appealable. Altogether we think that, if the word "conviction" be consistently given its ordinary sense of an adjudication of guilt, the terms of the Code leave no doubt as to the answer to be given to the question raised.

The petitioner's learned Advocate has endeavoured to create a doubt as to the meaning of the word "conviction" by referring to certain English cases, but they do not support him in his main contention. In *Burgess* v. *Boetefeur*(2) certain persons had pleaded guilty to keeping a disorderly house. The judgment was respited that the nuisances might in the meantime be abated, and, this having been done, the parties were afterwards brought up for judgment, when they were each fined one shilling and discharged.

(1) (1915) 17 Bom. L.R. 895. (2) (1844) 7 Man. & G. 481; 135 E.R. 193.

The question was whether the conviction took place when the defendants pleaded guilty or when they were brought up and received sentence. TINDAL C.J. observed that the word "conviction" was undoubtedly *verbum aequivocum*, being sometimes used as meaning the verdict of a jury and at other times in its more strictly legal sense for the sentence of the Court. But he decided that in the case before him it must mean the judgment of the Court. We propose no other meaning here. Another case under the same statute was *Jephson* v. *Barker and Redman*(1). There the defendant pleaded guilty and was ordered to enter into his recognizances to come up for judgment when called on. STEPHEN J. held that there had been a judgment—that is to say,

> "there had been an order of the Court that the prisoner should enter into his recognizance to come up for judgment if called upon."

This case, as Mr. Jayarama Ayyar has to admit, is directly against him. In the third case, *Hartley* v. *Hindmarsh*(2), it was held that there was no conviction as the order passed was not an adjudication upon the case.

Several decisions have held that an order under section 562 is appealable. In *Emperor* v. *Hira Lal*(3), BOYS J., in so deciding, notices an objection which has been suggested here too—why should an order under section 562, which involves no sentence, be appealable when a first class Magistrate can pass an unappealable sentence of fine up to a certain amount? We can see nothing very anomalous in this. The general effect of the relevant

(1) (1886) 3 T.L.R. 40. (2) (1866) 1 C.P. 553.
(3) (1924) I.L.R. 46 All. 828.

MAYANDI v. KUDUMBAN.

CURGENVEN J.

provisions of the Code has been reviewed by MUKERJI J. in *Bahadur Molla* v. *Ismail*(1). This case has been approved and followed in Bombay in *Madhav* v. *Emperor*(2). All these judgments are subsequent to the amendment of section 408 by Act XVIII of 1923.

We hold that an appeal lay to the Sessions Judge from the orders passed under section 562 and also therefore, by force of section 415 A, from the sentence imposed under section 457, Indian Penal Code. This being the only point taken in revision, we conclude that there is no sufficient reason to interfere with the judgment of the Court below. The criminal revision petition is dismissed.

K.W.R.

(1) (1924) I.L.R. 52 Calc. 463.

(2) A.I.R. 1926 Bom. 382.