

mortgagee or raises other contentions calculated to negative his right to maintain the suit, this rule cannot be insisted on. In this case the ninth defendant pleaded that the suit must fail in whole or in part for various reasons; and when these pleas have failed, the lower Court was right in directing that he and those who sided with him must pay the costs of the plaintiffs.

The appeal fails and is dismissed with costs of the plaintiffs-respondents.

G.R.

LAKSHMI
NAIDU
v.
GUNNAMMA.

APPELLATE CRIMINAL.

Before Mr. Justice Pandrang Row.

MARUDAMUTHU PADAYACHI (ACCUSED), PETITIONER,

v.

C. S. RAGHAVA SASTRI (PROSECUTION WITNESS No. 1),
RESPONDENT.*

1934,
September 5.

*Criminal Procedure Code (Act V of 1898), ss. 342 and 537—
De novo trial—Omission to examine accused afresh under
sec. 342 not an illegality vitiating trial.*

Omission to examine the accused under section 342, Criminal Procedure Code (Act V of 1898), afresh at a *de novo* trial is not an illegality which vitiates the trial, but is at the most an irregularity to which section 537 applies. Where there had been no prejudice to the accused and no miscarriage of justice in consequence of such omission,

held, that there was no ground for interference in revision.

Varisai Rowther v. King-Emperor, (1922) I.L.R. 46 Mad. 449 (F.B.), referred to.

* Criminal Revision Case No. 324 of 1934 (Criminal Revision Petition No. 302 of 1934).

MARUDAMUTHU
PADAYACHI
v.
RAGHAYA
SASTRI.

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 the Joint Magistrate of Kumbakonam in Criminal Appeal No. 45 of 1933 preferred against the judgment in Calendar Case No. 381 of 1933 on the file of the Court of the Sub-Magistrate of Tiruvadamathur.

A. Ganesa Ayyar for petitioner.

S. Nagaraja Ayyar for respondent.

Public Prosecutor (L. H. Bewes) for the Crown.

Cur. adv. vult.

ORDER.

The only point pressed in this case is that the omission of the Sub-Magistrate to examine the petitioner (accused in the case before him) under section 342, Criminal Procedure Code, afresh at the *de novo* trial is an illegality which has vitiated the trial. It has not been contended that new matter was introduced into the evidence during the *de novo* trial for the first time or that there was anything in the evidence at that trial about which the accused had not already given his explanation. In other words, there has been no prejudice to the accused in consequence of the omission to examine him a second time under section 342, Criminal Procedure Code, and it is not alleged that there has been any miscarriage of justice in consequence of the omission. The Full Bench ruling in *Varisai Rowther v. King-Emperor*(1) relied upon by the petitioner's Advocate does not go to the length of laying down that the omission to examine the accused for a second time during

(1) (1922) I.L.R. 46 Mad. 449 (F.B.).

a *de novo* trial is an illegality which vitiates the trial, and my attention has not been drawn to any case in which it was decided that in every *de novo* trial there must be a fresh examination of the accused under section 342, Criminal Procedure Code. The object of section 342, Criminal Procedure Code, is to provide the accused with an opportunity of being told by the Court of the matters appearing in the evidence against him and of explaining the same. This object has been fully achieved in the present case and there has been no real failure to comply with the provisions of section 342, Criminal Procedure Code.

I am therefore of opinion that the omission complained of in this case is not an illegality which vitiates the trial ; at the most, it is only an irregularity to which section 537, Criminal Procedure Code, applies.

The petition is therefore dismissed.

K.W.R.

MARUDAMUTHU
PADAYACHI
v.
RAGHAVA
SASTRI