RAMANUJA JEER v PICHU AYYANGAR.

of the Act. I therefore allow the revision petition and set aside the order of the learned District Judge and dismiss the suit. But, in the circumstances, I make no order as to costs.

V.V.C.

APPELLATE CRIMINAL.

Before Mr. Justice Horwill.

1937, February 3.

IN RE ABDUR RAHIMAN KUTTY AND THREE OTHERS (ACCUSED 1 to 4), PETITIONERS.*

Child Marriage Restraint Act (XIX of 1929), *sec.* 8—*Additional District Magistrate—Power to try cases under the Act—Code of Criminal Procedure (Act V of* 1898), *sec.* 10 (2).

Under section 8 of the Child Marriage Restraint Act (XIX of 1929) read with section 10 (2) of the Code of Criminal Procedure, an Additional District Magistrate who has been given all the powers of a District Magistrate is empowered to try a case under the Child Marriage Restraint Act also.

Where, therefore, a District Magistrate took cognizance of an offence under the Child Marriage Restraint Act (XIX of 1929), but transferred it to the Additional District Magistrate for trial,

held the latter had power to try the case.

Maria Pillai v. *Gopalakrishna Iyer*, 1928 M.W.N. 633, explained.

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 Session of the South Malabar Division in Criminal Appeal No. 2 of 1936 preferred against the judgment of the Court of the Additional District

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* Criminal Revision Case No. 362 of 1936 (Criminal Revision Petition No. 333 of 1936).

Magistrate of Malabar in Calendar Case No. 1 of 1935.

V. L. Ethiraj, *K. S. Jayarama Ayyar* and *A. S. Sivakaminathan* for petitioners.

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

ORDER.

The only question in this criminal revision case is whether an Additional District Magistrate is empowered under section 8 of the Sarada Act (Child Marriage Restraint Act XIX of 1929) to try cases under that Act. The District Magistrate took cognizance of the case but transferred it to the Additional District Magistrate for trial; and it is contended that the District Magistrate could not do so, but was bound to try the case himself, even though the Additional District Magistrate was given under section 10 (2) of the Code of Criminal Procedure all the powers of a District Magistrate.

There can be no doubt that if section 8 of the Sarada Act makes it clear that Additional District Magistrates should not try such cases, then the mere fact that an Additional District Magistrate is invested with all the powers of a District Magistrate under section 10 (2) of the Code would not empower him to try a case under the Sarada Act; but it is a well-known canon of interpretation that two statutes should be reconciled if they can be. I agree with Mr. Jayarama Ayyar that an Additional District Magistrate is not a District Magistrate. Section 10 (3) of the Code makes an Additional District Magistrate subordinate to the District Magistrate, so that the District Magistrate has certain powers under section 520 of the Criminal Procedure Code, for

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example, over the Additional District Magistrate. The question is, however, whether section 8 of the Sarada Act intended to exclude trial by Additional District Magistrates. In reading that section it has to be assumed, unless the contrary is quite clear, that it was not intended to take away the powers given to the Additional District Magistrates under section 10 (2) of the Code.

Section 8 reads:

"Notwithstanding anything contained in section 190 of the Criminal Procedure Code, 1898, no Court other than that of a Presidency Magistrate or a District Magistrate shall take cognizance of, or try, any offence under this Act."

It may be noted that no reference is made to section 10 of the Criminal Procedure Code. One would have expected section 10 to have been coupled with section 190 if the Legislature had intended to exclude the jurisdiction of an Additional District Magistrate. If this section had been worded positively, merely empowering District Magistrates to take cognizance of offences under the Act, the present argument would probably never have been put forward; for nowhere in any Act are Additional District Magistrates coupled with District Magistrates; so that where District Magistrates are given any powers, those of the Additional District Magistrates are presumed. A handle for the present contention is afforded by the fact that the section reads more strongly in the negative form:

" . . . no Court other than that of a Presidency Magistrate or a District Magistrate shall take cognizance of, or try, any offence under this Act."

This negative form is necessitated by the opening words of the section:

"Notwithstanding anything contained in section 190 of the Criminal Procedure Code".

Had it not been for these words a Subdivisional Magistrate or a Magistrate specially empowered could have taken cognizance of the offence under section 190 of the Code. In order to prevent these officers from taking cognizance of an offence under section 190, Criminal Procedure Code, it was necessary to word section 8 of the Sarada Act so as to limit the taking of cognizance and trial to the other Magistrates mentioned in section 190 of the Criminal Procedure Code, viz., Presidency Magistrates and District Magistrates. Section 8 of the Sarada Act makes no mention of Additional District Magistrates because section 190, Criminal Procedure Code, does not.

I do not therefore find any difficulty in reading section 8 of the Sarada Act with section 10 (2) of the Criminal Procedure Code and holding that an Additional District Magistrate, who has been given all the powers of a District Magistrate, is empowered to try a case under the Sarada Act also.

My attention has been drawn to the judgment of REILLY J. in *Maria Pillai* v. *Gopalakrishna Iyer*(1). After a trial by a Sub-Magistrate, stolen property was handed over to the accused. An appeal was preferred by the complainant to the Subdivisional Magistrate, who passed an order returning it to the complainant. In revision it was held by a Full Bench that an appeal lay only to the District Magistrate and that the Subdivisional Magistrate had no jurisdiction. The case then went back to the District Magistrate, who transferred it to the Additional District Magistrate. The matter again came before this Court

(1) 1928 M.W.N. 633.

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in revision and REILLY J. passed the following order :

"Following the opinion of the Full Bench I must hold that the Additional District Magistrate had no jurisdiction to hear the appeal. His order is therefore set aside. The appeal is transferred to the District Magistrate."

It is seen that REILLY J. gave no reason at all for his order ; but he apparently felt himself bound by the actual words used by the Full Bench that it was only the District Magistrate who could hear the appeal. The Full Bench certainly did not decide that an Additional District Magistrate specially empowered could not have heard the appeal.

This petition is accordingly dismissed.

V.V.C.