

APPELLATE CRIMINAL.

Before Mr. Justice Horwill.

T. N. BORAI GOUDER (ACCUSED), PETITIONER,

1938,
May 4.

v.

COMMISSIONER, OOTACAMUND MUNICIPALITY
(COMPLAINANT), RESPONDENT.*

Code of Criminal Procedure (Act V of 1898), ss. 526 and 531—Case pending before Bench Magistrate's Court—Transfer ordered to the Court of Stationary Sub-Magistrate—Case disposed of by the former Court before the order of transfer was communicated—Validity of—Sec. 531 of the Act.

A case pending before a Bench of Magistrates was ordered to be transferred to the Court of a Stationary Sub-Magistrate. Before, however, that order had been communicated to the Bench Magistrate's Court, the case came up before the Bench and on the accused's plea he was convicted and sentenced.

Held that the Bench Court, when it took up the case of the accused and disposed of it, had no jurisdiction to do so.

Held, however, that section 531, Criminal Procedure Code, applied to the case and prevented the order of the Bench Court from being void and that as there had been no miscarriage of justice, the High Court would not interfere in revision and set aside the order.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the order and conviction passed by the Court of the Bench of Magistrates at Ooty, dated 9th September 1937, in S.T. Case No. 807 of 1937.

* Criminal Revision Case No. 1005 of 1937 (Criminal Revision Petition No. 940 of 1937).

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P. S. Narayanaswami Ayyar for petitioner.

K. V. Muthukumaraswami and *N. Gopala Menon* for respondent.

N. Somasundaram for *Public Prosecutor* (*V. L. Ethiraj*) for the Crown.

ORDER.

The petitioner was charged before the Bench of Magistrates, Ootacamund, under sections 249 and 313 of the District Municipalities Act for storing firewood. During the pendency of the case before the Bench, the accused put in a transfer application in the Court of the Joint Magistrate of Coonoor, who ordered the transfer of the case to the Court of the Stationary Sub-Magistrate, Coonoor. Before however that order had been communicated to the Bench Magistrate's Court, the case came up before the Bench and on the accused's plea he was convicted and sentenced to pay a fine of Rs. 5. This petition has been filed on the ground that the Bench Court ceased to have jurisdiction after the order of the Joint Magistrate and that therefore the order of that Court is illegal.

With regard to stay applications in civil matters it has been held by the Full Bench in *Venkatachalapati Rao v. Kameswaramma*(1) that the stay order operates only from the date on which the order is communicated to the Court whose proceedings are stayed. The reason seems to be that the Court having seisin of the matter in question has jurisdiction to proceed with it and that the appellate Court in ordering stay is merely prohibiting that Court from proceeding further with the matter until further orders.

(1) (1917) I.L.R. 41 Mad. 151 (F.B.).

But the order of prohibition does not take away BORAI GOUDER
 the jurisdiction of the trial Court ; it merely sus-
 pends it. If therefore the order has not been COMMISSIONER,
 received, the Court does not lose its jurisdiction OCTACAMUND
 because the order has been passed. It therefore MUNICIPALITY.
 follows that any act done after the order of stay
 is passed is still valid unless the order of the
 higher Court has been disobeyed. This reasoning
 would not however apply to an application for
 transfer. The ordinary rule is that an order
 operates from the date on which it is passed, the
 rule with regard to stay proceedings and injunc-
 tions being an exception to that general rule.
 Although no authority has been quoted which
 deals with the date on which a criminal order of
 transfer operates, *Ademma v. Venkata Subbayya*(1)
 deals with that question with regard to civil suits.
 It was there held that the order for transfer must
 operate from the date on which that order is
 passed and that therefore any Court which
 continues to do any act after the order is passed—
 even though a copy of the order has not been
 received by it—is acting without jurisdiction.
 The same reasoning would, I think, apply to
 criminal proceedings ; and I am therefore of
 opinion that in the present case the Bench Court,
 when it took up the case of the accused and
 disposed of it, had no jurisdiction to do so.

Nevertheless, it does not follow from the mere
 fact that the Bench Court had no jurisdiction,
 that its order is void. I think that section 531,
 Criminal Procedure Code, would apply to a case
 of this kind and so prevent the passing of this

(1) (1933) I.L.R. 56 Mad. 692.

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order without jurisdiction from being void. The whole principle underlying the various provisions of Chapter XLV is that no order or sentence shall be void on the mere ground of some irregularity or want of jurisdiction, unless it leads to a miscarriage of justice or prejudices the accused. It seems to me, in the present case, that it is immaterial whether the case of the accused was considered by the Bench Court or by the Stationary Sub-Magistrate. No miscarriage of justice having occurred this Court will not interfere in revision and set aside the order.

The petition is therefore dismissed.

V.V.C.
