

APPELLATE CRIMINAL.

*Before Mr. Justice Burn.*1938,
April 14.

IN RE K. V. VENKATA RAMANIAM AND THREE OTHERS
(ACCUSED IN CALENDAR CASES NOS. 836 AND 837 OF 1937
ON THE FILE OF THE STATIONARY SUB-MAGISTRATE
OF OMALUR), PETITIONERS.*

Code of Criminal Procedure (Act V of 1898), ss. 190 (1) (c), 242 and 252—Sec. 190 (1) (c)—Scope of—Magistrate begins a trial as summons case—Finds that an offence triable only under warrant case procedure has been committed—Procedure to be followed.

Section 190 (1) (c) of the Criminal Procedure Code is concerned with extra-judicial information, knowledge or suspicion and it has nothing to do with knowledge gathered by a Magistrate in open Court from the evidence of witnesses given during a trial.

If a Magistrate begins a trial as a summons case and then finds that an offence triable only under warrant case procedure has been committed, he is bound to apply warrant case procedure thenceforward and he is not in any way disqualified from proceeding with the trial.

Rajaratnam Pillai, In re(1) dissented from.

CASE REFERRED for the orders of the High Court, under section 438 of the Criminal Procedure Code, by the District Magistrate, Salem, in his letter dated 9th December 1937.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the order of the Court of the Stationary Sub-Magistrate, Omalur, dated 12th October 1937 framing charges against the accused in Calendar Case No. 836 of 1937 on its file and to

* Criminal Revision Case No. 994 of 1937 (Case Referred No. 55 of 1937).
Criminal Revision Case No. 3 of 1938 (Criminal Revision Petition
No. 3 of 1938).

(1) (1936) I.L.R. 59 Mad. 442.

quash the said charges and proceedings connected therewith.

VENKATA
RAMANIAM,
In re.

Public Prosecutor (V. L. Ethiraj) for the Crown.
T. Krishnaswami Ayyangar for petitioners.
B. Narasimha Ayyangar for complainant.

ORDER.

I am unable to accept this reference. With all respect to KING J. I am unable to follow the reasoning in *Rajaratnam Pillai, In re*(1). Section 190 (1) (c), Criminal Procedure Code, is concerned with extra-judicial information, knowledge or suspicion and it has nothing (in my opinion) to do with knowledge gathered by a Magistrate in open Court from the evidence of witnesses given during a trial. If a Magistrate begins a trial as a summons case and then finds that an offence triable only under warrant case procedure has been committed, he is, I think, bound to apply warrant case procedure thenceforward and he is not in any way disqualified from proceeding with the trial. Let the papers be returned and the case proceed.

V.V.C.

(1) (1936) I.L.R. 59 Mad. 442.