APPELLATE CRIMINAL.

Before Mr. Justice King.

IN RE MALAI AND TWO OTHERS (ACCUSED IN CALENDAR CASE No. 95 OF 1937, ON THE FILE OF THE COURT OF THE TOWN SUB-MAGISTRATE OF TRICHINOPOLY).* 1937, August 18.

Code of Criminal Procedure (Act V of 1898), ss. 242 and 252—Summons issued for an offence under sec. 426, Indian Penal Code, triable only according to procedure applicable to summons cases—Accused appeared—Magistrate informing them that other offences were disclosed by the complaint—Procedure applicable to warrant cases followed—Legality of.

A Magistrate issued summonses to the accused for an offence under section 426, Indian Penal Code, only; and when the accused were brought before him he did not apply section 242, Criminal Procedure Code (i.e., procedure applicable to summons cases) but informed them then and there that on reconsideration he held that other offences triable under the procedure applicable to warrant cases also were disclosed by the complaint, and proceeded to apply section 252, Criminal Procedure Code.

Held, the procedure adopted by the Magistrate was legal.

Rajaratnam Pillai, In re(1) explained and distinguished.

Emperor v. *Chinna Kaliappa Gounden*(2) and *Ponnuswami Goundan, In re*(3) referred to.

CASE referred for the orders of the High Court, under section 438 of the Criminal Procedure Code, by the District Magistrate of Trichinopoly in his letter No. C.R.C. No. 2 of 1937, dated 6th May 1937.

A complaint was filed before the Second Class Town Magistrate, Trichinopoly, against the three accused in Calendar Case No. 95 of 1937 mentioning sections 452, 426, 506, 500 and 109, Indian

* Criminal Revision Case No. 333 of 1937 (Case Referred No. 24 of 1937).
(1) (1936) I.L.R. 59 Mad. 442. (2) (1905) I.L.R. 29 Mad. 126 (F.B.).
(3) (1931) I.L.R. 55 Mad. 622 (F.B.).

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Penal Code, as the offences alleged to have been committed by them. Though the offence under section 500, Indian Penal Code, is one cognizable by a First Class Magistrate only, the Town Second Class Magistrate, instead of returning the complaint under section 201, Criminal Procedure Code, for presentation to the proper Court, received the same, recorded a sworn statement of the complainant under section 200, Criminal Procedure Code, and on a consideration of the complaint and the sworn statement, thought fit to take cognizance of the case for the offence of mischief alone, punishable under section 426, Indian Penal Code, and triable only under the procedure applicable to summons cases. Accordingly, he issued summons in respect of that offence only. But when the accused appeared, instead of examining them in respect of the offence under section 426, Indian Penal Code, and following the procedure applicable to summons cases, the Magistrate on reconsideration, apparently holding that the complaint disclosed also offences triable by the procedure applicable to warrant cases, adopted that procedure. He examined the prosecution witnesses. They were not cross-examined as the pleader for the accused was absent and the accused did not themselves cross-examine them. The accused were then examined generally under section 342, Criminal Procedure Code. Ultimately the Magistrate framed charges against the accused, not only for an offence under section 426, Indian Penal Code, but also for offences under sections 452, 504 and 506, Indian Penal Code.

When the case was posted for re-cross-examining the prosecution witnesses, objection was taken

by the accused that the procedure adopted by the Magistrate was illegal. On the strength of the decision in *Rajaratnam Pillai, In re*(1), it was contended that the Magistrate having taken cognizance of a summons case, he should adopt the procedure applicable to summons cases and not the procedure applicable to warrant cases. The Magistrate disallowed the objection. The accused then moved the District Magistrate, Trichinopoly, who under section 438, Criminal Procedure Code, reported the case to the High Court for orders.

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

ORDER.

This reference is made on the assumption that the facts are governed by a decision of my own reported as *Rajaratnam Pillai, In re*(1). The facts are obviously distinguishable. In *Rajaratnam Pillai, In re*(1), I had to deal with a case in which the Magistrate had not only taken cognizance of an offence triable only under Chapter XX of the Code of Criminal Procedure but had actually applied sections 242 and 244 and taken evidence. In the present case, though the Magistrate had issued summonses to the accused for an offence under section 426, Indian Penal Code, only, he did not apply section 242, Criminal Procedure Code, when the accused were brought before him, but informed them then and there that on reconsideration he held that other offences also were disclosed by the complaint, and proceeded from that moment to apply section 252, Criminal Procedure Code.

It is no doubt stated with some lack of precision in *Rajaratnam Pillai, In re*(1) that when

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

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"once a Magistrate has taken cognizance of an offence which is triable only according to the procedure applicable to summons cases, etc.," but the argument is clear that I was concerned solely with Chapter XX and the provisions of section 246. A situation such as has now arisen was not then contemplated and was obviously not being considered. I accordingly hold that the decision in *Rajaratnam Pillai, In re*(1) does not and cannot apply to the facts of this case.

That a Magistrate has power to change his mind in regard to the exact offences which a complaint discloses before he begins to enquire into the case cannot be denied on general principles, and even if it be argued that in the present case he has impliedly dismissed a complaint under other sections of the Penal Code than section 426, he still has power to re-entertain a complaint on the same facts without the need of any action by any superior Court [vide *Emperor* v. *Chinna Kaliappa Gounden*(2) and *Ponnuswami Goundan, In re*(3).]

In the result, I am unable to accept the learned Magistrate's reference and must decline to interfere.

V.V.C.

(1) (1936) I.L.R. 59 Mad. 442.
(2) (1905) I.L.R. 29 Mad. 126 (F.B.). (3) (1931) I.L.R. 55 Mad. 622 (F.B.).