

(1927) 10 MAD CK 0063
In the Madras High Court

A.S. Rangesa Rao

APPELLANT

Vs

A. Swaminatha Iyer

RESPONDENT

Date of Decision : 28-10-1927

Acts Referred:

Madras Local Boards Act, 1884 — Section 221

Citation : 108 Ind. Cas. 414 : (1928) 27 LW 320

Hon'ble Judges : Devadoss, J

Bench : Single Bench

Judgement

Devadoss, J.

Criminal Revision Case No. 403 of 1927.

1. This is an application to revise the order of the Second Class Sub-Magistrate of Kodavasal in a proceeding launched by the Taluk Board of Naunilam u/s 221 of the Local Boards Act. The counter petitioner was assessed to profession tax in the sum of Rs. 160 and he not having paid it the Board sent the case to the Magistrate for action u/s 221. The Magistrate on the objection of the counter-petitioner went into the question whether he was liable to be assessed at Rs. 160 or at a lower figure. The Magistrate is not competent to inquire into the propriety of assessment which is entirely within the province of the Board. The section says; "The amount or apportionment of any such sum shall in case of dispute be ascertained by such Magistrate." He can only determine the amount if the amount claimed is disputed on the ground that it has been paid wholly or partly or that some one else is the asseeesee and not he. But the section does not at all give any jurisdiction to the Magistrate to inquire into the basis of assessment or to vary the amount assessed by the Board. When there is a dispute as to the arithmetical calculation of the amount, he certainly would be entitled to say whether the amount is correct or not, but that would in no way give him jurisdiction to inquire into the propriety or otherwise of the assessment. In this case the counter petitioner contended that he was not liable to be assessed at Rs. 160. His remedy was to have appealed to the Board whose decision

according to the rules under the Act is final. He did not choose to appeal to the Board but objected before the Magistrate. I hold that the Magistrate acting u/s 221 has not got the power to revise the assessment made by the Local Board. I, therefore, set aside the order of the Magistrate and direct him to restore the case to his file and dispose of it according to law. It will be open to the counter-petitioner to raise any valid objection to the prosecution. Fresh evidence will be admitted. Any amount paid by the counter petitioner will remain in Court pending order of the Magistrate.

Criminal Revision Case No. 402 OF 1927

2. This is an application to revise the order of the Additional District Magistrate of Tanjore refusing to interfere with the order of the Sub-Magistrate of Kodavasal referred in the other criminal revision case. The learned Additional District Magistrate has erred in thinking that he could not act u/s 435, Criminal Procedure Code. A Magistrate acting u/s 221 acts in the capacity of a Magistrate and his order are subject to the provisions of Sections 435 and 439, Criminal Procedure Code. The District Magistrate can call for the records of the case and may proceed in accordance with the provisions of Sections 435 and 439 if the facts of the case warrant such action.