

(1929) 05 MAD CK 0011
In the Madras High Court

C. Sachidanadam, Agent Addison and Co., Ltd.

APPELLANT

Vs

V. Sowmya Gopala Aiyangar and Another

RESPONDENT

Date of Decision : 02-05-1929

Acts Referred:

Penal Code, 1860 (IPC) — Section 411

Citation : 120 Ind. Cas. 75

Hon'ble Judges : Odgers, J

Bench : Single Bench

Judgement

Odgers, J.—This case raises an interesting point. This is a petition to revise the order of the learned Third Presidency Magistrate, dated the 3rd November 1927. There were four accused. The first accused was charged with criminal breach of trust by obtaining from Messrs. Addison & Co., 2 motor buses on a hire purchase agreement, Ex. B. This man obtained the buses from Addison & Co., and signed the hire purchase agreement. The second accused also came to Madras with him and signed Ex. B and also the lien agreement. Exhibit B is dated 23rd September, 1924. On the 10th August by Ex. O the buses were transferred to the second accused at Madura, the hire purchase agreement having terminated on the 27th April, 1925, under its conditions, as the first accused did not pay the instalments due. On the 25th December, 1925, by Ex. Q the second accused transferred them to the third accused at Madura. The learned Magistrate convicted the first accused, being convinced that he made a dishonest disposal of the buses and acquitted the second and. third accused, as he had no jurisdiction to try them. On the 26th February, I made a reference to the learned Magistrate asking for his reasons why he held that there was no jurisdiction to try these two persons, He has returned an answer which helps neither side, because he says the offence was committed in Cochin which is obviously wrong. Now the question I have to deal with is this. The second accused is charged with abetment of criminal breach of trust. The third accused is charged with receiving u/s 411 Indian Penal Code. The question is, put very shortly, whether the Magistrate has jurisdiction to try the abetment and the receiving, which clearly took place outside his territorial

jurisdiction here in Madras. The section which allows the Magistrate to try the first accused is Section 181 (2) of the Criminal Procedure Code, because the property which is the subject of the criminal breach of trust was clearly received by him within the territorial jurisdiction of the Magistrate here in Madras. There is no abetment in Madras nor is there any receiving in Madras. Mr. V.L. Ethiraj, the learned Counsel for the petitioner relies on Section 239 Sub-sections (6), (c) and (f) which allow certain persons to be tried together and the whole question really comes to this: is Section 239 which occurs in Chap. XIX headed "Of the Charge" controlled by or independent of the chapter as to "jurisdiction." Chapter XV which begins with Section 177 provides that "every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed." Mr. Ethiraj points out that there are no controlling words in the section that it is subject to provisions as to jurisdiction. On the other hand Mr. Narasimhachariar points out that jurisdiction must always be the foundation of a charge and must be imported into Section 239. The trouble is that except one case there is no authority to guide one in this matter and it is an extraordinary thing that both the learned gentlemen who appear say that they have searched for authority and found practically none and if this were not the end of the sittings I should be tempted to refer this matter to a Bench. But both sides have asked me to give my own decision and I will do so to the best of my ability. The authority against Mr. Ethiraja's view is expressed in Bissessar Vs. Emperor, a decision of a Bench of the Calcutta High Court. There, I think they clearly hold, though Mr. Ethiraj says that it was not necessary for the decision, that jurisdiction governs Section 239 so that unless the matter comes within the territorial jurisdiction of the Magistrate in the first instance, he cannot avail himself of Section 239 to try abetment, for instance, with the principal offence. I am doubtful about the matter, I must say. But giving the best consideration I can to it and with this expression of opinion of the Calcutta High Court, I am inclined to think that jurisdiction being the foundation of a charge is to be imported or understood as present in all the subsequent procedure set out in the Code; and if that is so, it clearly must govern Section 239. I am, therefore, of opinion that the learned Magistrate was right in acquitting the second and third accused, though not for the reasons he gives and the Criminal Revision case must be dismissed. Of course, nothing that I have said will operate to prevent the second and third accused being proceeded against within the proper jurisdiction.