

(1959) 08 MAD CK 0020
In the Madras High Court

Employees' State Insurance Corporation APPELLANT
Vs
M. Haji Md. Ismail Sahib, Proprietor, Haji Md. Ismail Sahib RESPONDENT
Tannery and Others

Date of Decision : 19-08-1959

Acts Referred:

Contract Act, 1872 — Section 49
Criminal Procedure Code, 1898 (CrPC) — Section 182
Employees State Insurance Act, 1948 — Section 39

Citation : (1960) ILR (Mad) 1 : (1940) 72 LW 697 : (1959) 2 MLJ 521

Hon'ble Judges : Somasundaram, J; Ramaswami, J; Basheer Ahmed Sayeed, J

Bench : Full Bench

Judgement

Ramaswami, J.—The Employees State Insurance Corporation, Madras, filed six charge-sheets against Sri Haji Mohammad Ismail Sahib, in regard to two tanneries Sri V.S. Raghavan, in regard to Revathi Studios, Sri M.H.M. Munas, in regard to Royal Studios, Sri Noor Kazi, in regard to Amco Studios and Sri K.S. Praksh Rao and Sri K. Venkatarama Ayyar, in regard to Prakash Studios, under the Employees' State Insurance Act. The complaints were taken on file by the Chief Presidency Magistrate, Madras, and numbered as C.C. Nos. 2396, 2397, 3545, 3546, 3547 and 3548 of 1958.

2. In regard to the location of the factories and establishments and the address of the registered office, if any, in the City of Madras, and the addresses of the Offices of the principal employers in these cases, the following information is forthcoming:

In C.C. No. 2396 of 1958, the factory concerned is Messrs. Haji Md. Ismail Saheb Tannery. It is situated in Ellamman Koil Street, Tiruvotriyur, Madras-19. The registered office is also in the same place. The principal employer is Sri Haji Md. Ismail Sahib and his office is situated in No. 17, Sydenham's Road, Periamet, Madras-3.

3. In C.C. No. 2397 of 1958, the factory concerned is Messrs. Ameen Rahman

Tannery. It is situated in Ellamman Koil Street, Madras-19. The registered office is also in the same place. The principal employer is Sri Haji Md. Ismail Sahib and the Manager is Shri Abdul Sukkur and their office is situated in No. 17 Sydenham's Road, Periamet, Madras-3.

4. In C.C. No. 3545 of 1958, the factory concerned is Messrs. Revathi Studios, situated in Arcot Road, Kodambakkam. The registered office of the factory was also in the same place. The studio was sold on 21st November, 1957 and Sri V.S. Raghavan and Sri V. Rangachari, the principal employer and manager respectively of the Revathi Studios now carry on their correspondence from 110-F, Mount Road, Madras.

5. In C.C. No. 3546 of 1958, the factory concerned is Messrs. Royal Studios. It is situated at Arcot Road in Vadapalani, Madras. The registered office is also in the same place. The principal employer is Sri M.B.M. Munas and his address is also the same.

6. In C.C. No. 3547 of 1958, the factory concerned is Messrs. Amco Studios, Lessees of Film Centre (P.) Ltd., and Vijaya Cine Laboratories (P.) Ltd. It is situated at Vadapalani. The factory's registered office also is situated in the same place. The principal employer is Mr. Noor Kasi and his office address is also the same.

7. In C.C. No. 3548 of 1958, the factory concerned is Messrs Prakash Studios. It is situated in Vadapalani, Madras. The factory's registered office is also in the same place. The principal employers are Sri K. S. Prakash and Sri K. Venkatarama Ayyar and their office address is also the same.

8. The accused persons raised a preliminary objection that the Chief Presidency Magistrate's Court had no jurisdiction and the places where the factories are situated are within the jurisdiction of the Sub-Divisional Magistrate, Poonamallee. Therefore, applications were filed by the Employees' State Insurance Corporation, No. 2, Sir Desikachari Road, Mylapore, Madras-4, for giving either a direction to the Chief Presidency Magistrate to try the various Calendar Cases pending before him or to transfer them to the file of the Sub-Divisional Magistrate, Poonamallee, within whose jurisdiction the factories and establishments are situated as contended by the accused themselves.

9. The points that arose for consideration before one of us, Somasundaram, J., were (1) whether the Chief Presidency Magistrate had territorial jurisdiction to try the cases and (2) if not, whether the cases could be transferred from the file of the Chief Presidency Magistrate's Court to the file of the Court having jurisdiction to try the cases.

10. On the first point Somasundaram, J., took the view, on the materials placed before him then, that the Chief Presidency Magistrate will have no jurisdiction to try the cases and that the High Court would have no power to invest that Court with jurisdiction to try the cases.

11. Regarding the second point, viz., whether the High Court has power to transfer the cases from the file of the Chief Presidency Magistrate to the file of the Court having jurisdiction to try the cases, i.e. the Sub-Divisional Magistrate's Court, Poonamallee, the accused contended that such transfer could not be effected and relied on the decisions in Assistant Sessions Judge, North Arcot v. Ramammal (1911) 22 M.L.J. 141 : ILR 1911 Mad. 387. In re Sikka Goundan (1922) 17 L.W. 69 and In Re: Markapuram Pedda Subbanna, and also on certain observations in Rangamannar Chetti v. Emperor (1935) M.W.N. 649. On these materials then placed before him, our learned brother, as then advised, observed that these decisions appeared to support the stand taken by the defence but considered however that the decision in Assistant Sessions Judge, North Arcot v. Ramammal (1911) 22 M.L.J. 141 : ILR 1911 Mad. 387, which was the basis of all subsequent decisions required reconsideration. In view of conflicting rulings our learned brother felt that the correct scope of Sections 346(1) and 526(1)(1) should be delimited for guidance of the subordinate Courts and directed that the papers be placed before My Lord the Chief Justice for the matter being heard by a Full Bench for an authoritative pronouncement. This Full Bench has thereupon been constituted by the learned Chief Justice.

12. Before dealing with the point of law raised, viz., the correct scope of Section 346(1) and 526(1) and concerning which there are a series of conflicting rulings like the Assistant Sessions Judge, North Arcot v. Ramammal (1911) 22 M.L.J. 141 : ILR (1911) Mad. 387, requiring reconsideration, we have to point out that the learned Advocate-General who appeared at our request, and whose lucid and able exposition was of great assistance to us, was able to convince that in this case the Chief Presidency Magistrate as a matter of fact has got territorial jurisdiction. The general common law rule is that where no place of payment is specified, either expressly or by implication, the debtor must seek the creditor : Mahaluxmi Bank Ltd. Vs. Chotanagpur Industrial and Commercial Association, , Goniram v. Shankar Rao ILR (1950) Madh. B. 72, AIR 1930 207 (Nagpur) , Gokul Das and Others Vs. Nathu , Drexal v. Drexal L.R. (1916) 1 Ch. 251, Hagrai v. Johnson AIR 1915 Nag. 65, Tar Mahomed Khan Amir-ud-Din (1913) 20 I.C. 683, Raman Chettiar v. Gopalachari ILR (1908) Mad. 223; Motilal v. Surajmal ILR (1904) 30 Bom. 167; Battappa v. Virabkadrappa (1905) 7 Bom. L.R. 993 and Ball v. Antwerp, London and Brazil Lintas L.R. (1891) 1 Q.B. 103.

13. It is laid down by Littleton that the obliger of a bond, conditioned for the payment of money at a particular day, is bound to seek the obligee, if he be in England, and at the set day to tender him? the money, otherwise he shall forfeit the bond: Cranley v. Hillary (1813) 105 E.R. 327. The Common Law rule is a reasonable rule and it is in conformity with justice and equity because it recognises the obligation of the debtor to pay his debt and that obligation can only be discharged by the debtor going to his creditor and repaying the amount, and the common law rule imposes this obligation only when there is no express contract to the contrary: Bharumal Udhomal and Others Vs. Sakhawatmal Veshomal and Others, . The principle is that when a man agrees to do any

particular thing, he must do all that is necessary. If it be to pay money to A on a particular day, he must seek A : Soward v. Palmer (1815) 129 E.R. 390. Section 49 of the Indian Contract Act does not preclude the application of the rule of English Common Law that the debtor must seek out his creditor and pay his debt where the creditor happens to reside, unless there is an arrangement to the contrary: M. Ramalinga Aiyar Vs. T.K. Jayalakshmi and Another, , K.S.P.L.A. Annamalai Chettiar v. Daw Hnin AIR 1936 Rang. 251 and Muhammad Esuff Rowther v. M. Hatteem & Co. (1930) 67 M.L.J. 296 : AIR 1934 Mad. 581

14. Bearing this principle in mind let us examine the facts of this case. Section 39 of the Employees' State Insurance Act, lays down:

The contribution payable under this Act in respect of an employee shall...be paid to the Corporation.

That payment to the Corporation has to be made at the office in Desikachari Road, Mylapore, Madras-4. Similarly, the returns to be submitted u/s 44 of the said Act have to be submitted to the Corporation or to such officer of the Corporation as it may direct. The registers will naturally be maintained by the various factories and establishments in their offices where they are located. In this connection it is contended that by a circular the Corporation has enabled payment to be made in mofussil centres. But this does not relieve the factories and establishments from the obligation under the Common Law rule that the debtor must seek the creditor. In Draxal v. Draxal L.R. (1916) 1 Ch. 251, it was held that where a payment was bound to be made in England, on the principle of debtor seeking the creditor, the fact that for purposes of convenience the payments were being made in America, would not relieve the debtor from the Common Law obligation and the consequences arising from default thereof.

15. Therefore, we hold first of all, that the Chief Presidency Magistrate had territorial jurisdiction to enquire into the matter and the fact that different parts of the offence were committed in a different jurisdiction would make no difference. Where it consists of several acts done in different local areas, it may be enquired into or tried by a Court having jurisdiction over any of such local areas ; see Section 182, Criminal Procedure Code.

16. Next we shall examine the question whether even assuming that the Chief Presidency Magistrate had no territorial jurisdiction, this Court can confer jurisdiction on the Chief Presidency Magistrate to try those cases according to law.

17. The jurisdiction of a Magistrate or a Civil Judge to enquire into and dispose of criminal cases and suits depends upon two elements. First of all the Magistrate or the civil Judge must be competent to entertain and dispose of the cases or suits. In the Criminal Procedure Code that competency is set out in Schedule II. In the CPC the competency is determined by pecuniary jurisdiction or by special conferment of powers under statutes or by being designated personally to try and dispose of such suits or proceedings. This competency is different from

territorial jurisdiction. Both the Criminal Procedure Code and the CPC contains provisions regarding the venue of the Criminal trial (Sections 178 to 184 both inclusive of the Criminal Procedure Code and Sections 15 to 25 of the Civil Procedure Code). Normally competency and venue must concur. Criminal cases and suits may, however, occur where they do not concur. So provisions are made both in the CPC and the Criminal Procedure Code for meeting such a contingency.

18. There is one vital difference, however, between the CPC and the Criminal Procedure Code. Civil suits are between individuals and in criminal cases it is the State which is vitally interested and except as regards private complaints the State is the Prosecutor. In fact even in regard to private complaints, the State plays a very important part. Under the scheme of the Criminal Procedure Code which followed in this respect the French Criminal Procedure, two sets of parallel procedure are prescribed for the institution and trial of cases, viz., on complaint to the police and the complainant himself instituting the complaint in the appropriate Court. Under the Civil Procedure Code, if the District Munsif, for instance, finds that he has no pecuniary or territorial jurisdiction to entertain the suit, he will direct the return of the plaint to the party for presentation to the proper Court. Under the Criminal Procedure Code before a Magistrate takes cognizance of a case, he is empowered u/s 201 of Criminal Procedure Code when the complaint is made in writing and the Magistrate finds himself not competent to return the complaint for presentation to proper Court. But where cognizance is taken by a Magistrate as he is bound to take on a complaint preferred by a department of the State without recording a sworn statement u/s 200, Criminal Procedure Code, if he finds that he is not competent to try the case or has no territorial jurisdiction, he cannot direct the return of the complaint for presentation to the proper Court. A Magistrate after taking cognizance must dispose of the complaint in any one of the ways prescribed under the Criminal Procedure Code, viz., dismissal (Section 203) reference to superior Magistrates (Sections 346, 349); discharge (Section 253); committal (Section 347); conviction; acquittal, stoppage of proceedings (Section 249). Section 346(1) of the Code of Criminal Procedure prescribes the procedure of a Sub-Magistrate in cases which cannot be disposed of by him by reason of incompetency or want of territorial jurisdiction. It lays down that if in the course of the inquiry or a trial before a Magistrate in any Distr^{ct} outside the Presidency Towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay the proceedings and submit the case with a brief report, explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction, as the District Magistrate directs. A direct authority on point is *Ramagopal v. Dharampal* (1957) M.P.L.J. 177.

19. The point which arises for consideration from the wording of Section 346(1) is whether this procedure covers only cases of want of competence or want of territorial jurisdiction (confined only within the district) or both. In *District Magistrate of Cuddapah Vs. Syed Abdul Kareem*, , it was held by Harwill, J., that

where the objection is that the Collector should have filed the complaint himself and that he had no power to delegate that right to the Revenue Divisional Officer and that the complaint should have been made to the Sub-Magistrate having jurisdiction at the place where the Collector received the letter are correct, the Magistrate should return the complaint for presentation to the Magistrate having jurisdiction and not forward the papers to his immediate superior u/s 346(1). We do not find any warrant for the limitation placed by Horwill, J. In this opinion we are fortified by a recent Bench decision of the Calcutta High Court in *Amarendra Nath Vs. Raghunath Nandan and Others*, wherein it was held that there is nothing in Section 346 to show that that section has no application to cases of want of territorial or local jurisdiction, that on the other hand the use of the words "some other Magistrate in such district " and "such other Magistrate having jurisdiction", in Section 346(1) may reasonably be construed to indicate that cases of want of local or territorial jurisdiction are also included within the scope of Section 346, that this view is supported by the decision in *In re Muniswami 2 Weir 323* and that it is also well to remember in this connection that absence of local or territorial jurisdiction is under the Code a mere irregularity, really curable, and is of much lesser gravity than want of other jurisdiction: vide Sections 526(1)(i), 530 and 531, Criminal Procedure Code. In fact the object of these sections is that criminals should not be allowed to escape by reason of technical irregularities. The policy of the Code as shown by Section 531 is to uphold in most cases orders passed by a criminal Court which was lacking in local jurisdiction or which has committed illegalities or irregularities unless failure of justice has been occasioned or is likely to be occasioned through such want of jurisdiction or such illegalities or irregularities: *In Re: Ganapathy Chetty and Another*, ; *Mt. Bhagvati v. King-Emperor* ILR (1924) Pat. 417; *Asst. Sessions Judge, North Arcot v. Ramammal* (1911) 22 M.L.J. 141 : ILR (1911) Mad.387; 26 M. 640 cures irregular proceedings wrongly held in a wrong local area unless it appears that the error as to territorial jurisdiction has in fact occasioned a failure of justice. Therefore there is no reason to place the very narrow construction as Horwill, J., has done, in his short judgment in which there is no discussion and which also shows that the earlier decisions of this Court were not brought to his notice. See also *Sowbagiammal v. Rasheed* (1954) 2 M.L.J. 459, to the same effect. Agreeing with the Bench decision of the Calcutta High Court in *Amarendra Nath Vs. Raghunath Nandan and Others*, , we hold that Section 346(1) is wide enough to take in cases of want of territorial or local jurisdiction.

20. The High Court u/s 526(1) may order that any offence be enquired into or tried by any Court not empowered under Sections 177 to 184 of the Criminal Procedure Code, both inclusive but, in other respects competent to inquire into or try such cases. Sections 177 to 184 relate to the place of enquiry or trial. Section 526(1) empowers the High Court to confer jurisdiction upon a Court not having local jurisdiction but otherwise competent to inquire into and try such offences.

21. The history of Section 526 is significant. Section 35 of the Act XXV of 1861

(First Criminal Procedure Code) empowered the Sudder Court to order transfer of any criminal case of appeal, or inquiry from one criminal Court or District to another if it would promote the ends of justice or tend to the convenience of the parties or witnesses. Section 64 of the 1872 Code gave similar powers to the High Court in almost similar terms. Section 526 of the 1888 Code elaborated this power in terms very similar to those contained in Sub-section (1) to (7) of this section of the present Code.

22. To sum up, the High Court when it is made to appear to it that the circumstances contemplated in Clauses (a) to (e) of Section 526(1) exist, may clothe with jurisdiction any Court not empowered under Sections 177 to 184 to inquire into any offences and try the same provided that in other respects that Court is competent to inquire into or try such offences. This is precisely what is asked for in the instant case. On the footing that the Chief Presidency Magistrate's Court has no territorial jurisdiction to enquire into these offences, the learned Public Prosecutor has been instructed to seek our order to clothe the Chief Presidency Magistrate with jurisdiction to enquire into and try these cases. The point is concluded by authority. In *In Re: Ganapathy Chetty and Another*, , a Bench of this Court held that even assuming that the High Court in its original criminal jurisdiction had no power in the usual course to try the case, the appellate side of the High Court can exercise the power given to the High Court by Section 526(1) for reasons (d) and (e) contained in Section 526(1) pass an order that the offences committed outside the jurisdiction of Madras be also tried in the High Court Criminal Sessions along with other offences which were committed in Madras. *Spencer, J.*, who sat with *Sadasiva Ayyar, J.*, who delivered the leading judgment has observed at page 795, that u/s 526, the High Court is empowered to make such a direction. Similarly, a Bench of the Bombay High Court in *Queen-Empress v. Atmaram Govind* (1900) 2 Bom. L.R. 394, has held that where a Sessions Judge on a case being committed to him, reported the case to the High Court u/s 526 as he was of opinion that he could not try the case without an order of the High Court, since he found judicially that all the acts constituting the alleged offences with which the accused was charged were committed, if at all, in Bombay, the Bombay High Court can clothe with jurisdiction the Sessions Judge of Ratnagiri to try the case.

23. Thus, where an offence is being inquired into or tried by a Court contrary to the provisions of Sections 177 to 184 of the Code of Criminal Procedure, the error can be rectified by the High Court by an order formally made under the provisions of Section 526(1) that the case be tried by such a Court. *Emperor Vs. Bhau Dharma*, , AIR 1925 490 (Oudh) , dissented and *Wahib Bux v. Emperor* AIR 1929 Sind 250 : (1929) Cri.L.J. 1121; *Queen Empress v. Ram Dei* ILR (1896) All. 350; *Queen Empress v. Thaku* ILR (1884) 8 Bom. 312; *Queen Empress v. Atmaram Govind* (1900) 2 Bom. L.R. 394; *Asst. Sessions Judge, North Arcot v. Ramamma* (1911) 22 M.L.J. 141 ILR (1911) Mad. 387; *Ledgard v. Bull* ILR (1886) All. 191 : L.R. 13 IndAp 134, *In Re: Ganapathy Chetty and Another*, , *Emperor v. Sheeo Dayal* (1919) 23 O.C. 87: AI.R. 1919 Oudh 69 and AIR 1925

490 (Oudh) .

24. In the light of this analysis the decisions in Assistant Sessions Judge, North Arcot v. Ramammal (1900) 2 Bom. L.R. 394, in so far as they differ from the scope of Sections 346(1) and 526(1)(i) of the Code of Criminal Procedure as interpreted above cannot be considered to lay down sound law.

25. This reference to the Full Bench is answered accordingly.

26. In regard to the instant cases we have already directed that the trials should be proceeded with by the Chief Presidency Magistrate and we confirm that direction.

Basheer Ahmed Sayeed, J.

27. I have had the benefits of reading the judgment just now pronounced by my learned brother, Ramaswami, J. While I agree with him in the conclusions arrived at, I should like to add a few words of my own.

28. The facts relating to this reference to the Full Bench have been set out in detail by my learned brother and it is not necessary for me to traverse the same again. Though at an earlier stage a doubt was raised by the learned Counsel for the accused as to whether the Presidency Magistrate's Court had local or territorial jurisdiction to try these cases, the learned Advocate-General has, in the course of the hearing of this reference, made it clear that the Chief Presidency Magistrate's Court has jurisdiction to try the offences in respect of which the accused stand charged before him. The learned Counsel for the accused contended that since the accused persons own factories which are situated outside the territorial limits of the city of Madras and their Head Offices are also situated outside the city limits, the offences must be deemed to have been committed only outside the territorial jurisdiction of the Chief Presidency Magistrate so as to attract the operation of only Section 201 of the Criminal Procedure Code. This argument of the learned Counsel for the accused was obviously due to the fact that they ignored that the Employees' State Insurance Corporation itself with its office was situated in the city of Madras and that under the statute and the rules framed under Employees' State Insurance Act (XXXIV of 1948), the contribution as well as the returns had to be paid and submitted respectively to the Corporation wherever its office was situated. The learned Counsel for the accused, however, wanted to take advantage of the fact that by certain circular issued under the Employees' State Insurance Act, a facility was afforded to the owners of factories to pay their contribution to the treasuries situated outside the city limits and thereupon contended that the jurisdiction of the Chief Presidency Magistrate was ousted thereby. But the language of Sections 39(1), 40 and 44, reasonably understood, points only to the conclusion that the contributor had to make the payment of his contribution to the Corporation wherever its office was situated; even so, the return have to be submitted to the office of the Corporation where it is situated. The place of payment as also the submission of the returns, notwithstanding the fact that a

facility was extended to the contributors to make payments to the nearest treasury prescribed, is only to the Corporation at its office, wherever its office is situated. The treasuries are merely the agents of the Corporation for the mere purpose of receiving the payment and no more. The series of decisions cited before us by the learned Advocate-General and referred to by my learned brother Ramaswami, J., in his judgment, make it clear that the payment of the contribution due to the Corporation and also the submission of the returns, has to be done only at the place where the Corporation is situated, and the mere fact that some facility is afforded to the contributors, for the sake of convenience, to make payments outside the city limits would not by any means displace the legal obligation on the part of the contributors to pay their contributions and submit their returns to the Corporation at the place where the Corporation is having its office. The circular, therefore, relied on by the accused, dated 6th February, 1952, cannot be deemed to be a contract to the contrary between the parties and does not, in any way, absolve the contributors from the ordinary legal responsibility of a debtor being bound to seek the creditor and make the payment and discharge his obligations. Therefore, if a breach is committed, it is only a breach of the obligation to pay the Corporation at its office and not otherwise.

29. The next question that was argued by the learned Counsel for the accused was that the High Court had no power under the Criminal Procedure Code to order the cases in question to be tried by the Chief Presidency Magistrate or to direct a transfer from the Court of the Chief Presidency Magistrate to another Court, if the Chief Presidency Magistrate's Court was not already vested with the territorial jurisdiction to try such cases. This argument proceeded on the assumption that the Chief Presidency Magistrate's Court had no jurisdiction to try the offences because the offences were committed outside its local jurisdiction and when once there was no local jurisdiction for the Chief Presidency Magistrate, then the complaints filed before it became ineffective, and the only alternative for the Chief Presidency Magistrate was to act u/s 201, Criminal Procedure Code, Section 346, Criminal Procedure Code being of no avail to a Court situated within the presidency town. This argument also ignored the distinction that exists between the local or territorial jurisdiction of a criminal Court as contrasted with the competence of a criminal Court to try offence. The analogy of Section 24 of the CPC applicable to transfer of the pending civil cases was largely pressed into service in support of the contention of the learned Counsel for the accused that unless circumstances similar to those contemplated u/s 24 of the CPC were available, the High Court could not order transfer or direct the Court, which has no local jurisdiction, to try offences of the type in question. But the very patent distinction which exists between the powers exercisable u/s 24 of the CPC and the powers exercisable u/s 526(1)(e)(i) of the Criminal Procedure seems to have been lost sight of by the learned Counsel for the accused. A reading of Section 526(1)(e)(i), Criminal Procedure Code, would disclose that the powers of the High Court under this section are far wider than

those contemplated u/s 24, Civil Procedure Code. Lack of local or territorial jurisdiction does not appear to be bar against the High Court directing a criminal Court which is otherwise competent to try offences even though the offences were not committed within its territorial jurisdiction, provided all or any of the conditions specified in Section 526(1)(a), (b), (c)(d) and (e) are satisfied. Section 526(1)(e)(i) specifically vests the High Court with powers to order that any offence be inquired into or tried by any Court not empowered under Sections 177 to 184(both inclusive), but in other respects competent to inquire into or try such offences whenever it is made to appear to the High Court that such order is expedient for the ends of justice or is required by any provision of the Criminal Procedure Code or when it is made to appear that an order under this section will tend to the general convenience of the parties or witnesses.

30. The series of decisions cited before us by the learned Advocate-General on this aspect of the case, commencing from *Queen-Empress v. Atmaram Govind* (1900) 2 Bom. L.R. 394, and ending with *Amarendra Nath Vs. Raghunath Nandan and Others*, , viewed in their proper light, make it clear that the powers of the High Court, in the matter of transfer of criminal cases from one Court to another or to pass orders directing that an offence be enquired into by any Court not empowered under Sections 177 to 184, Criminal Procedure Code, are not circumscribed by the requirements contemplated in Section 24, Civil Procedure Code, but that they are of much wider scope. The Legislature seems to have deliberately enacted this difference with a view to secure efficient administration of criminal justice.

31. The learned Counsel for the accused, however, relied on certain decisions of single Judges of this Court wherein it has been held that resort to Section 201, Criminal Procedure Code, would be the proper remedy of a Magistrate who has no territorial jurisdiction to try offences for which a charge has been laid before him. In particular, reference was made by the learned Counsel for the accused to the decisions in *Sowbagiammal v. Rasheed* (1954) 2 M.L.J. 459, and *District Magistrate of Cuddapah Vs. Syed Abdul Kareem*, It is but fair to point out that in these decisions the powers of the High Court u/s 526(1)(e)(i) did not come up for consideration and the decisions were merely confined to the proper section that was to be resorted to by the Magistrate, viz-, whether it was Section 201 or Section 346(1), Criminal Procedure Code. As between the two sections, Section 346 and Section 201 of the Criminal Procedure Code decisions were that the proper remedy was to take action u/s 201, Criminal Procedure Code. These decisions, therefore, could not be authority for the proposition now contended for on behalf of the accused that the only course open in the present cases to the Magistrate or to the High Court was to take action or direct action being taken u/s 201, Criminal Procedure Code, disregarding the very wide powers vested in the High Court u/s 526(1)(e)(i) of the Criminal Procedure Code. In these decisions, the powers of the High Court u/s 526(1)(e)(i) were not invoked and the relief sought was confined to a very narrow issue. Questions such as the venue of the Trial Court and its competency to try offences as distinct from the power of the

High Court to clothe, with territorial jurisdiction, any Court, even if it did not possess territorial or local jurisdiction, were never adverted to in those decisions relied upon by the learned Counsel for the accused. The, decision in In Re: Ganapathy Chetty and Another, , is still good law, being in conformity with the policy underlying Section 526(1)(e)(i), Criminal Procedure Code.

32. In the result, I agree that the order that we have already passed in the matter should be confirmed.

Somasundaram, J.

33. I agree with my learned brothers Ramaswami and Basheer Ahmed Sayeed, JJ.