

(1948) 07 MAD CK 0006

In the Madras High Court

In Re: Gowleru Kotrappa and Others

Date of Decision : 06-07-1948

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 438, 439

Citation : (1949) CriLJ 83 : (1949) ILR (Mad) 598 : (1948) 61 LW 530 : (1948) 2 MLJ 126

Judgement

1. The District Magistrate of Bellary has moved this Court u/s 438, Criminal Procedure Code, for a decision on the point raised by him regarding

the correctness or otherwise of a ruling given by the Stationary Sub-Magistrate, Hospet, in C.C. No. 1179 of 1946 on his file. From the letter of

reference of the District Magistrate it is seen that during the course of the examination of a prosecution witness the vakil for the complainant wanted

to get a copy of the report of the police u/s 202, Sub-clause (I), Criminal Procedure Code and file the same as an exhibit in the case. The

Stationary Sub-Magistrate held, on the objections of the defence counsel, that the copy of the report is irrelevant. Later on, during the course of

the further cross-examination of P.W. 7, the Sub-Inspector of Police, a question was put to him as to whether he found the case of the

complainant to be true or not in the course of his enquiry u/s 202, Criminal Procedure Code. This question also was disallowed by the trial Court

on the objection raised by the defence counsel. The District Magistrate after discussing the point of law involved in these rulings disagrees with the

view taken by the Stationary Sub-Magistrate and has submitted the papers to this Court for action u/s 439, Criminal Procedure Code. When it

came on for hearing on a previous occasion, as no notice had been sent to the accused I issued notice to them, and even though the same was

served, nobody appeared in this Court. The learned Public Prosecutor has placed

before me all the relevant and important materials.

2. At the very outset I may say that the procedure adopted by the District Magistrate is not correct or proper. It is not the function of this Court to

give opinions on questions of law raised during the course of proceedings in a lower Court. If a ruling on a particular point given by a Magistrate is

wrong it is permissible for a complainant or an accused to come up in revision if there are any valid grounds for such procedure; but the more

appropriate course is to raise the question at the stage of an appeal and not come up in revision at an interlocutory stage even where the party

aggrieved is a private party. Therefore, it is incumbent upon Subordinate Courts to take care that questions of law arising in pending proceedings

are not referred for the opinion of the High Court. The analogous provisions regarding reference to the High Court in the CPC are contained in

Section 114 and Order 46. Order 46, rule I says that where the decree is not subject to appeal and where any question of law or usage having the

force of law arises, on which the Court trying the suit or appeal, or executing the decree entertains reasonable doubt, the Court may, either of its

own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained,

and refer such statement with its own opinion on the point for the decision of the High Court. Therefore in the Civil Procedure Code, there is no

provision for reference where the decree in the suit or appeal is subject to an appeal.

3. In a decision reported in *In re Palani Goundan* AIR 1914 Mad. 100, Sadasiva Aiyar, J., has held that a District Magistrate is not competent to

report to the High Court u/s 438 a point of law actually arising in a case pending before him. In that case what happened was that there was a

revision petition before the District Magistrate and a question of law arose therein, whereupon the District Magistrate referred the matter to the

High Court. It was held by the learned Judge that such a procedure was irregular. In this case also on the disallowance of the question and the

refusal to admit the document as evidence the aggrieved party filed a revision on which this reference has been made. The decision cited above is

authority against the procedure adopted by the District Magistrate. Moreover it seems to me that the Legislature has not chosen to give power to a

District Magistrate to refer questions of law arising interlocutorily during the course of an enquiry or trial. I therefore hold that this reference is incompetent and the records are directed to be returned.