

(1986) 02 MAD CK 0012

In the Madras High Court

Case No : Criminal Revision Case No. 250 of 1983 and Cri. Revision Petition No. 244 of 1983

In The Matter of: Palanisamy Gounder

Date of Decision : 14-02-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 326

Citation : (1986) 02 MAD CK 0012

Hon'ble Judges : S. Ratnavel Pandian, J

Bench : Single Bench

Advocate : V. Gopinath, for the Appellant; Kannappa Rajendran, Government Advocate, for the Respondent

Judgement

S. Ratnavel Pandian, J.—This revision is directed against the judgment made in Crl. Appeal No. 42/83 on the file of the Court of Session,

Coimbatore, dismissing the said appeal and confirming the judgment passed by the Trial Court in C.C. No. 2219/82 on his file convicting the

revision petitioner under S. 4(1)(j) of the Tamil Nadu Prohibition Act and S. 75 of the City Police Act, and sentencing him to suffer rigorous

imprisonment for three months and to pay a fine of Rs. 1,000/- in default to suffer rigorous imprisonment for six weeks, for the offence under S.

4(1)(j) of the Prohibition Act, but imposing no sentence for the Offence under S. 75 of the City Police Act.

2. The only point that has been raised before me is that originally this case was tried by the Judicial Second Class Magistrate. Udumalpet and

thereafter it was transferred to the Special Judicial First Class Magistrate (Prohibition), Pollachi, which Court was constituted for trying prohibition

offences, that the Special First Class Magistrate, instead of taking fresh evidence from the Medical Officer, has acted on the evidence recorded by

the Judicial Second Class Magistrate, Udumalpet already and that this procedure followed by the Special First Class Magistrate is not in

compliance with the provisions of the Criminal Procedure Code. According to the learned Counsel, the First Class Magistrate ought to have taken

fresh evidence as the Court of the First Class Magistrate is a superior Court to that of the Second Class Magistrate and falls under a different

category.

3. I see much force in the above argument. S. 326 of the Criminal P.C. reads that whenever any Judge or Magistrate, after having heard and

recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or

Magistrate who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his

predecessor or partly recorded by his predecessor and partly recorded by himself. In this case, the Special I Class Magistrate cannot be said to

be the successor of the Second Class Magistrate, because he is a Magistrate exercising powers superior to those of the Second Class Magistrate

and as such belongs to an entirely different category of Magistrate. Therefore, the Special First Class Magistrate ought to have taken fresh

evidence instead of acting on the evidence taken already by the Judicial Second Class Magistrate. To that extent, there is an illegality in the

procedure adopted by the First Class Magistrate, and hence the conviction cannot be sustained.

4. In the result, the conviction and sentence passed against the revision petitioner by the Court below are set aside and he is acquitted. The revision

is allowed. The fine, if paid by the revision petitioner is directed to be refunded to him.

5. Petition allowed.