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**(1932) 08 MAD CK 0016**  
**In the Madras High Court**

Pulikonda Venkatasubbayya

APPELLANT

Vs

Maddi Venkata Lakshmayya

RESPONDENT

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**Date of Decision :** 02-08-1932

**Acts Referred:**

**Citation :** AIR 1933 Mad 65 : (1932) 36 LW 623

**Hon'ble Judges :** Bardswell, J

**Bench :** Division Bench

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## **Judgement**

Bardswell, J.—This is an application by the accused in C.C. No. 50 of 1931, on the file of the Subdivisional Magistrate, Ongole, for

quashing the first head of the charge that has been framed against him, of an offence punishable u/s 409, I.P.C. The complaint in this case was one

of offences punishable under Sections 406, 409 and 477, I.P.C. The Magistrate who first heard the case framed a charge of an offence punishable

Section 204, I.P.C. He did not formally discharge the accused in respect of the other offences, but it is well established that his procedure in

framing a charge only as to an offence u/s 204, I.P.C. amounted to a discharge of the accused in regard to them. In the end the Magistrate

acquitted the accused, but on revision this Court set aside the acquittal and ordered a retrial.

2. It is contended for the accused-petitioner that the Magistrate who is now hearing the case could not legally frame a charge u/s 409, I.P.C. On

the other side it is contended that the law enables him so to do. In support of this latter contention Emperor v. Chinnakaliappa Goundan (1906) 29

Mad 126 and In re. Ponnuswami Goundan AIR 1932 Mad 369 are quoted, but neither of these cases is directly in point as they both deal with

complaints which have been dismissed u/s 203, Criminal P.C. The ruling that is most favourable to the contention that the head of charge now

under consideration was passed with jurisdiction is that in *Emperor v. Maheswara Kondaya* (1908) 31 Mad 543, in which it was held that it is

competent for a Magistrate who has discharged an accused u/s 253, Criminal P.C., to take fresh proceedings and issue processes against the

person discharged in respect of the same offence without such order being set aside by a higher Court.

3. But the facts of that case can be distinguished from those of the case now under notice on two grounds. One is that the case had never reached

the final stage of a judgment being written and the other, which is the more important one, is that there had been no order from a revisional

authority as to what should be the nature of the further proceedings. Now in his order in *Crl. R.C. No. 116 of 1931*, setting aside the acquittal of

the petitioner accused, *Lakshmana Rao, J.*, has given as his grounds for setting aside the acquittal that it has been found that the accused might be

lawfully compelled to produce the document as evidence in Court and that, on the further finding that he had secreted it the order of acquittal was

unsustainable. I must agree with the learned Public Prosecutor that his language shows that he intended no more than that the case should be

retried in respect of the charge u/s 204, and that he did not mean that the case was to be reopened with respect to any other offence that was

indicated by the complaint. I would hold then that the action of the Magistrate in framing the head of charge now under consideration cannot be

justified by the ruling in *Emperor v. Maheswara Kondaya* (1908) 31 Mad 543, but that it was an action which he was not competent to take.

4. Two other decisions have been called to my attention, namely, those in *Krishna Reddi v. Subbamma* (1901) 24 Mad 136 and *Gandi Appa*

*Razu v. Emperor* AIR 1920 Mad 94. Neither of these is directly in point. They decide that when a Magistrate has acquitted a person of a charge

of an offence which the Magistrate was competent to try, and has at the same time by implication discharged him in respect of an offence triable

only by a Court of Session, a Sessions Judge has power to order his committal in respect of the offence of which he has been so discharged. As I

find that by the order of this Court on revision the Magistrate was limited to retrying the petitioner accused only for an offence punishable u/s 204,

I.P.C., I quash the head of charge now framed against him u/s 409, I.P.C., and direct that his trial proceed only with reference to the other head of charge.