

(1891) 07 MAD CK 0011
In the Madras High Court

Queen-Empress

APPELLANT

Vs

Erugadu

RESPONDENT

Date of Decision : 13-07-1891

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 262, 263

Citation : (1892) ILR (Mad) 83

Hon'ble Judges : Shephard, J; Handley, J

Bench : Division Bench

Judgement

1. The procedure of the Deputy Magistrate in all these cases seems to have been irregular in several respects. In the first place the proceedings

were not commenced by any summons to the accused or other formal notice that a criminal investigation was about to take place.

2. Chapter XXII of the Code of Criminal Procedure does not appear to intend that proceedings in summary trials shall commence ordinarily

otherwise than in other criminal trials either by summons or warrant, indeed Section 262 implies the contrary. Section 263 requires a record of the

proceedings to be made by the presiding officer, and we think that it is intended that the record shall be made at the time of the trial. Presumably the

Deputy Magistrate, while seated on his pony, could not have kept the record required by Section 263, and he states that no clerk accompanied

him. The record must, therefore, have been prepared after the close of the trial from memory or possibly from some rough note. This is not the

procedure contemplated by the Code even in summary trials.

3. The admissions of the accused persons are directed by Section 243 to be recorded, and this also should be done at once, and the words used

in the admissions should be stated as nearly as possible. Here again the procedure of the Deputy Magistrate appears to have been defective, for he does not appear to have made any record of the admissions at the time, and the record he did ultimately make, does not profess to state the words of the admissions and does not show what was admitted. From the record it is impossible to say whether the accused admitted only the acts or omissions with which they were charged, or admitted them with all the accompanying circumstances necessary to constitute their acts or omissions offences. This may have led to a most serious miscarriage of justice. In our opinion these errors and irregularities of procedure are sufficiently serious to invalidate the proceedings of the Deputy Magistrate, and are not such as we can overlook even to secure the very desirable end of the improvement of the sanitary condition of Adoni.

4. And there is another fatal objection to these proceedings, viz., that the Deputy Magistrate, as Chairman of the Municipal Council, was the very person interested in abating the nuisances, in respect of which these proceedings were taken, and was therefore a judge in his own cause.

5. It is true Section 555 of the Criminal Procedure Code provides that the mere fact of being a Municipal Commissioner shall not of itself be a disqualification for trying any case, but the Chairman of a municipality being an executive officer, who would be the proper person to institute prosecutions for offences against the health or comfort of the town, is a very different person from a mere Municipal Commissioner, and is clearly disqualified to try such cases.

6. For the foregoing reasons we set aside the convictions by the Deputy Magistrate, and direct that the cases be commenced de novo and tried according to law by some Magistrate other than the Chairman of the Municipality.