

**(1970) 01 AP CK 0007**  
**In the Andhra Pradesh High Court**

Sri Eswaraswamy Temple

APPELLANT

Vs

Jangam Nagaiah and Others

RESPONDENT

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**Date of Decision :** 23-01-1970

**Acts Referred:**

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966  
— Section 93(2)  
Criminal Procedure Code, 1898 (CrPC) — Section 561A

**Citation :** (1971) CriLJ 433

**Hon'ble Judges :** Obul Reddy, J

**Bench :** Single Bench

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## Judgement

Obul Reddy, J.—These revisions are before me, as the Additional Sessions Judge (Sri P. Raghu-nadha Sastry), Kurnool, has referred them to this Court, being of the view that the Judicial First Class Magistrate, Dhone, committed illegality in not only dismissing the petitions tiled before him u/s 87 of the Madras Hindu Religious and Charitable Endowments Act, 1951 (corresponding to Section 93 (2) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966), for default, but also in refusing to exercise the jurisdiction vested in him u/s 561-A, Criminal P.C. even after he was moved to exercise the jurisdiction under the said provision. It is in that view that the Additional Sessions Judge (Sri P. Raghunatha Sastry) made the reference for interference by this Court.

2. I may at the outset point out that the learned Additional Sessions Judge as also the Magistrate failed to understand the true scope of Section 93 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowment Act, 1966 and betrayed their ignorance of the fact that 8. 561 A, Criminal P.C. does not clothe except the High Court with inherent power to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

3. A trustee of certain Temples in Racherla Village, Dhone Taluk, filed petitions

before the Judicial First Class Magistrate, Dhone u/s 87 of the Madras Act (corresponding to Section 93 (2) of the new Act) seeking delivery of possession of the records, accounts and properties of the Temples, as there was resistance from an ex-office, holder. All that the aforesaid provision lays down is that, where the successor is resisted in or prevented from obtaining the possession of the records, accounts or properties of the institution or endowment by such ex-office-holder or by any person who is otherwise not entitled to be in such possession, any Magistrate of the First Class having jurisdiction shall, on an application made by the successor or the Executive Officer, by an order after notice to the ex-office-holder direct delivery of the possession of such records, accounts and properties of the institution or endowment, to the successor within the time specified in such order.

The Magistrate, on the applications made by the trustee, issued delivery warrants to the respondent, in the manner prescribed u/s 93 (2) (b), fixing a date for the return of the warrants. It would appear that, on the date fixed for return of the warrants, they were not returned and, therefore, the Magistrate thought fit to dispose of the applications by dismissing them for default. The facts narrated in the order of reference would show that delivery was effected subsequently. Thereafter, petitions were filed before the Magistrate for setting aside the orders passed by him for default and the Magistrate, while holding that; he had the inherent power to restore the applications dismissed by him for default, however, declined to exercise "that power" on the ground that the warrants were not returned by the date to which the applications were tested, and, therefore, any delivery effected thereafter, was unauthorized and as such, he was not inclined to set aside the orders dismissing the applications for default. It is thereafter that revision petitions were filed before the said Additional Sessions Judge, who made the reference for the reasons already referred to.

4. I am constrained to observe that the Additional Sessions Judge (Sri P. Raghunatha Sastry) had not obviously read Section 561-A, Criminal P.C. and if he had ever read the section, he had not understood the scope of the section. Section 561-A, Criminal P.C. may be extracted for the benefit of this officer and also for the benefit of the Judicial First Class Magistrate:

Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

It is manifest from a reading of the Section that the inherent power is conferred on the High Court and not any criminal Court Subordinate to it and this power, it is expected, has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the Section itself. I fail to understand how the Additional Sessions Judge or the Judicial First Magistrate could ever think that this power could also be exercised by a Magistrate of the First Class.

5. The Magistrate, in the first instance, was in error in dismissing the applications filed by the trustee u/s 87 of the old Act. The applications filed before him were not in the nature of complaints and if delivery warrants were not returned by a particular date to which the applications were posted, he should have awaited the return of the warrants. It is only in the event of the ex-office-holder failing to deliver possession of the records, accounts and properties within the time specified by the Magistrate in his order that the question of taking further action and imposing punishment as provided in Sub-section (3) of Section 92 will arise. There is no provision in the Criminal Procedure Code which empower a Magistrate to dismiss an application for default. It is only where a complaint is filed and the complainant is absent that Section 2471 Criminal P.C. empowers a Magistrate, when trying summons cases, to acquit the accused for nonappearance of the complainant, unless, for proper reasons, he adjourns the hearing of the case. Therefore, the reference made by the Additional Sessions Judge in so far as Crl. R. Ca. 93, 94, 95 and 96 of 1969 are concerned, was made either on a misunderstanding of the scope or ignorance of the provisions of Section 561-A, Criminal P.C. Therefore, the reference in these revisions Crl. R. Ca. Nos. 93, 94, 95 and 96 of 1969 is rejected and the revisions are dismissed.

6. So far as the other revisions, Crl. R. Cs, Nos. 8s, HO, 91 and 92 of 1969 are concerned as already pointed out, the proper course, the Magistrate should have adopted was to await the return of the delivery warrants and not to dismiss the applications. Therefore, the Magistrate is directed to take the applications pertaining to these revisions on file and proceed to dispose of the applications in accordance with what is provided for in Section 93 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966.

7. Mr, Padmanabha Reddy, in this connection, sought to contend that the trustee, who made the applications u/s 93 of the new Act, ceased to hold office on the date when he filed the applications and that, therefore, the applications were not maintainable. The respondents will be at liberty to raise this question before the Magistrate.

8. In view of the fact that the Magistrate was clearly in error in dismissing the applications for default, the reference is accepted and the revisions Crl. R.Cs. Nos. 89, 90, 91, and 92 of 1969 are allowed.