

(1917) 03 MAD CK 0051
In the Madras High Court

Sunnasi Kudumban

APPELLANT

Vs

Sivasubramania Kone and Others

RESPONDENT

Date of Decision : 21-03-1917

Acts Referred:

Citation : AIR 1918 Mad 538 : (1917) ILR (Mad) 1130 : 39 Ind. Cas. 980 : (1917) 5 LW 763

Hon'ble Judges : William Ayling, J; Napier, J

Bench : Division Bench

Judgement

Aylino, J.—The main point involved in this petition is whether Section 344, Criminal Procedure Code, authorises a Magistrate to grant an adjournment conditionally on the payment of costs. The power, if it exists, is certainly one very rarely exercised; on the other hand, the words of the Section ("on such terms as it thinks fit") seem wide enough to cover an order making the payment of costs by one party to another a condition of granting an adjournment. This is the contention of the learned Public Prosecutor, and the only cases to which our attention has been directed [Mathura Prasad v. Basant Lal 2 A.L.J. 831 ; (1905) A.W.N. 256 and Sew Prosad Poddar v. Corporation of Calcutta 9 C.W.N. 18, and a recent decision of a single Judge of this Court in Criminal Revision Cases Nos. 485 and 486 of 19163 are all in his avour. It is pointed out that the Code contains no provision for the recovery of costs ordered to be paid under this section; but this is not conclusive, for Sections 433 and 488 are instances in which Courts are specifically empowered to award costs without any provision as to their realisation; As at present advised I must hold that Section 344 confers the power in question.

2. Our attention is drawn to the fact that this case was taken upon a Police charge sheet filed on information furnished by petitioner. It appars, however, that petitioner had himself engaged a Vakil, and that he (petitioner) applied for the adjournment in consequence of the Vakil's absence. In such circumstances the fact that he was not a complainant u/s 200, Criminal Procedure Code, would

not be a bar to an order being passed against him.

3. The petition should be dismissed.

Napier, J.

4. In this case we are asked to revise the order of the 2nd. Class Magistrate of Madura Taluk directing the payment to the Pleader defending the accused of Rs. 25 for costs of the day, the case having been adjourned at the instance of the prosecution. The charge before the Magistrate was on a Police report, but the informant was represented at the hearing and joined in the application for adjournment made by the Police Officer on the ground that his Vakil was absent. The "order was passed u/s 344 of the Code of Criminal Procedure, which is as follows: "if, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn an inquiry or trial, the Court may, if it thinks fit, by order in writing stating the reason therefor, from time to time postpone, or adjourn the same on such terms as it thinks fit for such time as it considers reasonable and may by a warrant remand the accused in custody." We are asked to hold that the words "on such terms as it thinks fit" do not include the power to give costs. It is certainly true that such orders are very rarely made. It is also true that the granting of costs is specifically provided for in certain cases. Sections 148, 433 and 488 contain such a power, It is urged also with considerable force that it is not an incident of ordinary criminal procedure that costs should, so to speak, follow the event. And lastly we are pressed with the argument that, if the power to give costs was intended under this section, some provision would have been made for their recovery. These are certainly formidable arguments against reading this power into the words of the section. On the other band, it must be noted that this Section 344 applies to enquiries and trials and has no reference to the particular proceedings in which special provisions for costs are made. Section 148 is part of the procedure for prevention of the offences. Section 433 is a special provision for the High Court acting on reference and revision. Section 488 also does not apply to inquiries and trials, being part of the chapter on maintenance of wives and children. The principle that where, special provision is made in some oases, a like power should not be read into general words does not, therefore, apply as between the sections. Section 344, which is under consideration, covers the whole field of criminal proceedings in which a person is. an accused before a Court exercising ordinary jurisdiction. Nothing in it could be read to make any provision in the exercise of jurisdiction in the other classes of proceedings dealt with above, and it may well be that the Legislature in making provisions covering this whole field thought it advisable to give wide powers to judicial officers to be exercised with proper discretion in dealing with cases coming before them in their ordinary procedure. The argument that there is no provision for the recovery of costs would have more force if the Legislature had been careful, where it does make specific provision for costs, to provide also for their recovery, but it is clear that neither in Section 433 nor in Section 488 has this been done.

In Section 433, the words are "the High Court may direct by whom the costs of such reference shall be paid." In Section 488, although power is given to issue a warrant for levying the amount due for maintenance in manner hereinbefore provided for levying fines, Sub-clause 8 simply states that the Court shall have power to make such order as to costs as may be just. It may be arguable that on the true interpretation of the section, these costs can be levied by a warrant, but the fact remains that there is nothing specifically laid down by the terms of the section. Apart from the very wide power given by this Section 344, there is the use of the word "terms". Upon such terms" means something more than a mere general power to adjourn. It implies that a concession is granted to one side only on the condition that the other side suffers in some manner; and bearing in mind the wide meaning attached to the words "on terms" in civil procedure, it is difficult not to assume that the Legislature had in mind this ordinary form of terms, namely, the payment of costs. It is true that the language of Order IX of the CPC is "upon such terms as to costs or otherwise." But this argument of the specific mention of costs can be used against the contention, because it is clear that the Legislature intended the granting of costs as coming within the word "terms". If the language in the Code had been upon such, terms as the Court directs and may also award costs," the petitioner's argument would have more weight. Turning to authority, we find that the Allahabad High Court in Mathura Prasad v. Basant Lal 28 A. 207 ; (1905) A.W.N. 256 has held that Section 344 does give this power. It has also been so held by the Calcutta High Court in a case reported as Sew Prasad Poddar v. Corporation of Calcutta 9 C.W.N. 18 , and a Judge of this Court has quite lately followed these two decisions (Criminal Revision Cases Nos. 485 and 486 of 1916). Where the language used by the Legislature is intentionally wide, as it is in this case, I think that on the whole, it is best not to attempt to limit it, but to leave to the Legislature the task of imposing limitation if it is found that any power exercised under this rule operates in a manner which the Legislature thinks unjust. I am, therefore, of opinion that the power to award costs is vested in the Court under this section.

5. It is next urged that we should interfere with this order, as it was made against a person whose position in the trial was that of witness only. I quite agree that we have power to revise any order under this section and to use that power freely for the very reason that the words are so wide. But in this case, I see no reason why we should interfere. The petitioner was, in addition to being a witness, the informant to the Police. An informant is a person recognised in criminal procedure as initiating criminal proceedings. A person considering himself aggrieved can either lay a complaint before a Magistrate u/s 190 or give information to the Police u/s 154 and in either case, he occupies virtually the same position in that he is seeking protection from the Courts exercising Criminal Jurisdiction. As stated above, the informant in this case employed a Vakil and was virtually the prosecutor. I see no reason, therefore, why he should not be made responsible to the accused for the costs of the adjournment which he

asked for. I would dismiss the petition.