

(1911) 11 MAD CK 0037
In the Madras High Court

The Assistant Sessions Judge of North Arcot

APPELLANT

Vs

Ramaniammal and Others

RESPONDENT

Date of Decision : 29-11-1911

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 471

Citation : (1912) 22 MLJ 141

Judgement

1. This is a reference made by the Assistant Sessions Judge of North Arcot asking this court to quash the commitment of the accused in Sessions

Case No. 55 of 1911 to the Court of North Arcot. The order of commitment was made by the Second Class Magistrate of Tirupattur. There are

five accused in the case. The first accused Ramammah is the widow of one Rammakrishnier whose mother is the complainant. The second and

third accused are respectively the father and brother of the first accused. The fourth accused is also a relation of accused Nos. 1 to 3. The first

accused executed on the 20th July 1905 a mortgage deed for Rs. 3,000 in favour of the third and fourth accused and the consideration for this

deed is stated in it to be the amount due for principal and interest on a promissory note dated the 10th August 1902, alleged to have been

executed by the first accused's deceased husband in favour of the 4th accused for Rs. 2,400. The deed further recites that the executant, the first

accused, received Rs. 1,500 out of the Rs. 3,000 from the third accused for payment to the fourth accused towards the amount due on the

promissory note, In a suit for maintenance instituted by the complainant against the first accused in the District Munsif's Court of Tirupattur, No,

1062 of 1909, the first-accused pleaded, apparently with reference to the extent of the property in her hands liable for complainant's maintenance

that she owed a debt of Rs. 3,000 to the 3rd and 4th accused on the mortgage mentioned above. She summoned the 4th accused to produce the mortgage deed and the promissory note and in obedience to the summons they were produced by him.

2. The case for the prosecution is that the promissory note of the 10th August 1902 is a forged document and that no debt was due by the first accused's husband to the 4th accused. The charges against the 1st accused are abetment of forgery of a valuable security (i.e., the promissory note) and fraudulently using the same, under Sections 468 and 109, Indian Penal Code, and Section 471, Indian Penal Code. The 3rd and 5th accused are charged with abetment of the forgery of the promissory note, the 2nd accused was the writer, and the 5th accused the attester of the promissory note. And the charges against the 4th accused are forgery of the promissory note and fraudulently using the same as genuine.

3. The learned Assistant Sessions Judge is of opinion that the commitment of all the accused is illegal. With regard to the 1st accused, the objection

to the commitment according to him is that the prosecution was not maintainable without the sanction of the District Munsif's Court of Tirupatur, as

the offences of abetment of forgery and using a forged document as genuine were committed by a party to O.S. 1062 of 1909 in court in respect

of a document produced in that suit. The Assistant Sessions Judge is obviously right in holding that an offence u/s 463, Indian Penal Code,

mentioned in Clause (c) of Section 195, Criminal Procedure Code, covers an offence u/s 468, Indian Penal Code, the object of mentioning

Section 463 in Section 195(c), Criminal Procedure Code being to include all cases of forgery, whatever the nature of the fraudulent intention may

be--Tani Shah v. Bolahi Shah (1909) 14 C.W.N. 479 and Queen-Empress v. Tulja ILR (1887) Bom. 36.

4. The commitment of the 4th accused for forgery of the promissory note and fraudulently using the same as genuine has next to be considered.

With respect to the latter count it is contended that the production of the document in obedience to an order of the District Munsif's Court does

not amount to using it as genuine. This contention is sound. The 4th accused was bound to produce the promissory note and would have been

punishable u/s 175, Indian Penal Code, if he had failed to do so. An involuntary production of a document in court cannot be said to amount to any

user of it. It was contended for the prosecution before the Assistant Sessions Judge that, apart from its production in the District Munsif's Court, the promissory note was used for giving a colour of validity to the mortgage deed, but we doubt whether this argument can be upheld. Assuming that the promissory note was forged before the mortgage deed was brought into existence, there was nothing done with the promissory note at the time of the execution of the mortgage deed, and it was not used in any way. If both the documents were got up at the same time then they were part of the same transaction and the promissory note could not have been said to be used in any manner for the purpose of executing the mortgage document. The expression "using a document" is apparently used in the sense of its being put forward in some way for one of the purposes mentioned in Section 463, Indian Penal Code.

5. It is, however, not necessary to decide about the validity to the objection to the maintainability of the charge of user before the document was produced in court as the commitment on this charge must be quashed on another ground which applies equally to the charge of forgery as against the 4th accused as well as against the accused Nos 2, 3. and 5. That ground is that the promissory note and the mortgage bond were both.

executed in the village of Varatnapalli within the jurisdiction of the Sessions Court of the Salem division. The Assistant Sessions Judge held that the commitment would be illegal as the Magistrate having local jurisdiction over an offence committed at Varatnapali was the and Class Magistrate of Kristnagiri in the Salem district. In so holding his attention was apparently not drawn to Section 531, Criminal Procedure Code, which lays down

that no order of any criminal court shall be set aside merely on the ground that the inquiry in the course of which it was passed took place in a wrong sub-division or local area unless it appears that such error has in fact occasioned a failure of justice. An order of commitment is an order

within the meaning of this section-see *Queen-Empress v. Shahu* ILR (1884) B. 312 *Queen-Empress v. James Ingle* ILR (1891) B. 200. and

Queen-Empress v. Abbi Reddi ILR (1894) .M. 402. But it must be held that the commitment to the Sessions Court of North Arcot was illegal. u/s

177, Criminal Procedure Code, every offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction it

was committed. The offence was therefore triable by the Sessions Court of Salem and not by the Sessions Court of North Arcot. According to

Section 213, Criminal Procedure Code, "a Magistrate may make an order committing the accused for trial by the High Court or the Court of

Session as the case may be". The expression "the Court of Session" here can only mean the Court of Session having jurisdiction to try the case u/s

177, Criminal Procedure Code. Section 63 of Act X of 1872 provided that "Magistrates shall ordinarily commit to the Court of Session for the

sessions division in which the district to which they are appointed is situated." But the present Criminal Procedure Code contains no similar

provision. The Bombay High Court, in *Queen-Empress v. Shahu* ILR (1884) B. 312 held that the commitment should be to the court empowered

to try the case u/s 177, Criminal Procedure Code. The learned Judges in that case, having to deal with a commitment made to a court not having

such jurisdiction, did not quash the commitment but directed the transfer of the case to the court having jurisdiction. But the Privy Council has

pointed out in *Ledgard v. Bull* ILR (1886) A. 191 that a transfer from a court having no jurisdiction would not render the proceeding legal. The

Allahabad High Court, in *Queen-Empress v. Ramdei* ILR (1896) A 350. followed a similar course. *Ledgard v. Bull* ILR (1886) A. 191 was

apparently not brought to its notice. We do not, therefore, think that we would be justified in upholding the commitment and directing the transfer

of the case to the Sessions Court of Salem. We must hold that the commitment is illegal, and set aside the order of the Sub-Magistrate of

Tiruppatur. As we are informed that an appeal against the judgment the District Munsif's Court of Tiruppatur in Original Suit No. 1062 of 1909 is

still pending we do not consider it necessary to pass any further order in the case at present.