

(1918) 07 MAD CK 0007
In the Madras High Court

The Sessions Judge of Coimbatore

APPELLANT

Vs

In re Marappa Goundan

RESPONDENT

Date of Decision : 08-07-1918

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 436

Citation : (1918) 35 MLJ 667

Judgement

1. The decision in Krishna Reddiv. Subbamma ILR (1900) Mad. 136 goes only to this extent that where the prosecution had pressed for the

framing of a charge of a higher offence triable by the Sessions Court, even if the Subordinate Magistrate had originally taken cognizance only to a

charge relating to a lesser offence the refusal of the Magistrate to frame the charge for the higher offence might be treated as an order of discharge

in respect, of that offence and that Section 436 of the Criminal Procedure Code would in those circumstances give the District Magistrate

jurisdiction to direct the Subordinate Magistrate to commit the accused to the Sessions on the graver charge.

2. In the present case, the offence of attempt at rape was not mentioned in the police charge sheet on which the Subordinate Magistrate took

cognizance of the case and the prosecution did not press for the framing by that Magistrate of a charge against the accused in respect of that

offence.

3. The Sessions Judge was therefore justified in holding that the decision in Krishna Reddi v. Subbamma ILR (1900) Mad. 136 could not be

extended so as to cover this case and we accordingly accept the reference. Quashing the commitment we direct the Subordinate Magistrate of

Mettupalayam to proceed with the trial of the minor offences framed by him against the accused.