

(1933) 05 MAD CK 0007
In the Madras High Court

V.M. Ratnavelu and Another

APPELLANT

Vs

K.S. Iyer, Assistant Branch Manager, The Mutual Indemnity
and Finance Corporation, Ltd.

RESPONDENT

Date of Decision : 11-05-1933

Acts Referred:

Penal Code, 1860 (IPC) — Section 420

Citation : (1934) ILR (Mad) 996 : (1933) 38 LW 562 : (1933) 65 MLJ 529

Hon'ble Judges : Burn, J

Bench : Division Bench

Judgement

Burn, J.—Two persons were charged for cheating (Section 420, Indian Penal Code) in two cases and were tried by the Sub-Divisional

Magistrate of Vellore. There was a dispute before the Magistrate on the question whether he had jurisdiction to try the case. The accused persons

contended that he had not, and that the cases ought to be tried in Madras. The complainant contended that he had, and the learned Sub-Divisional

Magistrate held that he had jurisdiction, proceeded with the trial, and acquitted both the accused.

2. The complainant filed revision petitions in this Court against the orders of acquittal. Lakshmana Rao, J. dismissed the revision petitions,

observing that the Lower Court, i.e., the Sub-Divisional Magistrate, Vellore, ""had clearly no jurisdiction to try the case"" and that ""all his remarks

relating to the merits of the case must be regarded as mere obiter dicta"".

3. Then the complainant filed fresh complaints before the Chief Presidency Magistrate on the same facts. The Chief Presidency Magistrate

dismissed the complaints on 17th December, 1931, accepting the plea of the accused, that they had already been tried and acquitted, and that a

petition to revise the orders of acquittal had been dismissed.

4. Then the complainant came to this Court with revision petitions against the orders of the Chief Presidency Magistrate dismissing his complaints.

Those cases (Criminal Revision Cases Nos. 461 and 462 of 1932) were laid by direction of Ramesam, J. before a Bench and were disposed of

by Jackson, J. and Mockett, J. The order was pronounced by Jackson, J, and is to this effect:

An accused person can only plead *autrefois acquit* u/s 403 of the Code of Criminal Procedure if the acquittal set up is by a Court of competent

jurisdiction. A Court without territorial jurisdiction is not a Court of competent jurisdiction.

That is laid down in *Shankar Tulsiram v. Kundlik Anyaba* ILR (1928) 53 Bom. 69 and it is difficult to see how it could be held otherwise.

No one is applying to have the order of acquittal set aside u/s 531 and there is no need to consider that section.

Whether or no there was territorial jurisdiction is a matter that has not been decided after hearing both parties, and the Chief Presidency Magistrate

can decide that fact. His order is set aside and he is directed to proceed.

5. Thereupon the Chief Presidency Magistrate appears to have taken some further evidence and decided that the Vellore Magistrate had no

territorial jurisdiction. He therefore ordered the 3rd Presidency Magistrate to dispose of both the cases according to law.

6. From these orders the present revision petitions have been brought.

7. It is clear that the attention of Jackson and Mockett, JJ. was not drawn to the case of *Emperor v. Doraiswamy Mudali* ILR (1906) 30 Mad. 94,

in which a Bench of this Court took a different view from that of the Bombay High Court in *Shankar Tulsiram v. Kundlik Anyaba* ILR (1928) 53

Bom. 69. Section 531, Criminal Procedure Code, is strictly applicable to the facts of these cases. The only defect in the jurisdiction of the Vellore

Sub-Divisional Magistrate, which is alleged, is a want of territorial jurisdiction. Section 531, Criminal Procedure Code, says that no finding of a

Criminal Court shall be set aside merely because the trial was held in a wrong area. It follows that the judgments of acquittal passed by the Sub-

Divisional Magistrate, Vellore, could not have been set aside on the ground of want of territorial jurisdiction, even by this Court (since there is no

suggestion that any failure of justice has occurred by reason of the trial having been held in Vellore rather than in Madras). A fortiori it follows that

those judgments cannot be ignored by the Presidency Magistrates of Madras who are not tribunals superior to the Sub-Divisional Magistrate,

Vellore.

8. We therefore hold that the complaints to the learned Chief Presidency Magistrate in these cases were barred by Section 403, Criminal

Procedure Code. We set aside his order directing the 3rd Presidency Magistrate to dispose of them according to law, and we restore his order of

17th December, 1931, dismissing both complaints.