

**In Re: Krishna Pillai**

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**Court :** Kerala

**Decided On :** Sep-18-1959

**Reported in :** AIR1960Ker227

**Judge :** K. Sankaran, C.J. and; S. Velu Pillai, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 107(3), 109, 112 and 151

**Appeal No. :** Criminal Ref. No. 14 of 1959

**Appellant :** In Re: Krishna Pillai

**Advocate for Def. :** N.D.P. Namburipad, Adv.

**Advocate for Pet/Ap. :** Public Prosecutor

**Disposition :** Criminal reference accepted

**Judgement :**

ORDER

1. The point raised in the reference is correct and has to prevail. Even though the counter-petitioner was arrested under Section 151 of the Code of Criminal Procedure, the Sub-Magistrate who ordered such arrest did not proceed with the matter. The police also did not want the case to go on before the Sub-Magistrate. The police wanted to start proceedings against the counter-petitioner under

Section 107 of the Code of Criminal Procedure and accordingly an independent charge was filed under Section 109 before the Executive First Class Magistrate.

This was an independent action and the First Class Magistrate was exclusively competent to go on with the proceedings after passing a preliminary order under Section 112 in case he is satisfied that there are proper grounds to justify the adoption of such a course. For proceeding in that manner, he need not have called for a report from the Sub-Magistrate under Clause (3) of Section 107 of the Code. In fact that clause does not contemplate the calling for of such a report. The clause comes into play only when proceedings are to be initiated by a Magistrate not empowered by Clause (1) of the section. Here the proceedings had to be initiated by the First Class Magistrate himself and he is competent to do so.

The First Class Magistrate appears to have been under a misapprehension that he was called upon to continue the proceedings which the Sub-Magistrate had started by the arrest of the counter-petitioner under Section 151. That action had been dropped for all practical purposes and the charge sheet filed before the First Class Magistrate was for starting fresh and independent proceedings. It follows therefore that the First Class Magistrate had only to make up his mind on the materials made available to him whether he should initiate proceedings by passing a preliminary order. He refused to exercise his jurisdiction in that matter and he was wrong in releasing the counter-petitioner solely for the reason that he had no report before him from the Second Class Magistrate under Clause (3) of Section 107. The order of the First Class Magistrate is clearly illegal and cannot be supported. The reference made by the learned Sessions Judge is accordingly accepted.

2. The acceptance of the reference will normally have the effect of vacating the order of the First Class Magistrate and thereby making it obligatory on his part to go with the case in accordance with law. But the matter is now more than an year old and nothing untoward has happened in the meanwhile. Hence we think that it is not desirable to take any further action on the charge-sheet filed by the Police before the First Class Magistrate and we direct accordingly. If under the circumstances as they exist now, it is found necessary to start security proceedings

against the counter-petitioner, it will be open to the police to initiate fresh proceedings.

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