

In Re: Chellappa Chettiar and ors.

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Court : Chennai

Decided On : Jul-29-1942

Reported in : AIR1942Mad715; (1942)2MLJ308

Appellant : In Re: Chellappa Chettiar and ors.

Judgement :

ORDER

Horwill, J.

1. The District Magistrate of Ramnad has come to the conclusion that a case tried by the Sub-Magistrate of Tiruvadadanai is beyond his jurisdiction, because there were allegations in the complaint indicating that an offence under Section 148 Indian Penal Code, was committed, which offence is not triable by a Second Class Magistrate. The District Magistrate has therefore referred the matter to this Court in order that the case may be transferred from the file of that Sub-Magistrate to that of some Magistrate having jurisdiction.

2. The District Magistrate has as much power to transfer under Section 528 (2) of the Code of Criminal Procedure as this Court has under Section 526, Criminal Procedure Code; but neither the District Magistrate nor this Court ought to transfer a case where the Magistrate has no jurisdiction, the proper procedure being for the Magistrate to return the complaint, telling the complainant that he may present the complaint to the Court having jurisdiction. The tribunal which is to decide at this

stage whether or no the Sub-Magistrate should continue with the trial is neither the District Magistrate nor this Court, but the Sub-Magistrate himself. If he thinks he has jurisdiction, he must go on with the trial and dispose of the case. A Magistrate always has jurisdiction to try an accused for an offence less than that revealed in the complaint, although it would ordinarily be improper for him to do so. If a Magistrate at any stage of the trial is of opinion that an offence has been committed which cannot be tried by him, he should return the complaint as indicated above.

3. No interference is called for at this stage.

4. This reference is returned.

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