

**In Re: T.M.A. Nathan**

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**SooperKanoon Citation :** [sooperkanoon.com/780651](http://sooperkanoon.com/780651)

**Court :** Chennai

**Decided On :** Sep-06-1929

**Reported in :** (1929)57MLJ763

**Appellant :** In Re: T.M.A. Nathan

**Judgement :**

ORDER

1. The petitioner has been convicted by a Bench of Magistrates. He comes up in revision on the ground that the judgment convicting him is illegal as it has been signed only by the Chairman of the Bench. We think that it is a perfectly good ground of objection. Section 265 of the Code of Criminal Procedure is divided into three sub-Sections. The first provides that records and judgments shall be written by the presiding officer in English or in the language of the Court or in his mother tongue. The second prescribes that if authorised by the Local Government a Bench may employ a clerk to prepare the record or judgment which shall be signed by each member of the Bench present and taking part in the proceedings. The third directs that, if no such authority has been given the record--which presumably, includes the judgment--shall be prepared by a member of the Bench and signed 'as aforesaid' and shall then be 'the proper record.' The first sub-section says nothing about signing the record or judgment but deals merely with the language in which they shall be written. The intention we think, is that, by whomsoever the judgment and record may have been written, they shall be signed by all the members present. We have been referred to a decision contra by

Devadoss, J. in Ramakottiah v. Subba Rao : AIR1928 Mad1172 which is based on the wording of Section 367 of the Code of Criminal Procedure. With great respect, we do not consider that that section affords any assistance in the construction of Section 265. The words 'presiding officer of the Court' are no more than a compendious description of all classes of judicial officers, Magistrates and Judges who have to pronounce judgments.

2. The Public Prosecutor invites our attention to Section 537 of the Code of Criminal Procedure and argues that the omission should be treated as an irregularity, which has occasioned no miscarriage of justice. It has been held that the failure to comply with a mandatory provision of the Code is not necessarily an illegality. In this case, all the members of the Bench signed the register in which the sentence was embodied. They obviously agreed in the judgment and we do not think that their omission to comply with the technical requirement of the law as to the signing of it was anything more than irregularity, which occasioned no failure of justice.

3. There is, however, a further and fatal objection. It is founded on that disastrous provision of law, Sub-section (8) of Section 526 of the Code of Criminal Procedure which is absolutely imperative in its terms. The petitioner in the course of the trial applied for an adjournment for the purpose of moving the High Court for a transfer but the Bench rejected the application on the ground that it had been made after the trial had begun. That was, of course, no ground at all. Such an application can be made in the course of a trial and must, unfortunately, be granted. To refuse it, contrary to the terms of the section, is to deny the applicant an absolute right conferred on him by the statute and vitiates the whole proceedings.

4. We set aside the conviction, but, as the case arises out of a family dispute, do not order a retrial.