

**In Re: Eravadu and ors.**

**In Re: Eravadu and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/782618](http://sooperkanoon.com/782618)

**Court :** Chennai

**Decided On :** Sep-06-1950

**Reported in :** AIR1951Mad398; (1950)2MLJ774

**Judge :** Somasundaram, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 380, 438, 439 and 439(5)

**Appeal No. :** Criminal Revn. No. 481 and Case Referred No. 22 of 1950

**Appellant :** In Re: Eravadu and ors.

**Advocate for Pet/Ap. :** Srimathi Padmini Raghavan, Adv. for Public Prosecutor

**Judgement :**

ORDER

**Somasundaram, J.**

1. There is no doubt that under Section 380 Criminal P. C., the Joint Magistrate has not power to acquit. Vide Public Prosecutor v. Gurappa Naidu 57 Mad. 85: A. I. R. 1933 Mad. 728 : 34 Cr. L. J. 1045, Piramangaya, Pandara v. Emperor, 1943 M. W. N. CrI. 9: A.I.R. 1943 Mad. 390: 44 Cr. L. J. 668. In re Doraiswami Naidu, I. L. R. (1946) Mad. 891: A. I. R. 1945 Mad. 302: 47 Cr. L. J. 178.

2. Even so under Rule 263, Criminal Rules of Practice, the District Magistrate, if he is of opinion that the order of acquittal is wrong, must request the Government to prefer an appeal under Section 417, Criminal P. C., and not report the case to this Court for order under Rule 438, Criminal P. C. Further, under Section 439, Clause (5), Criminal P. C., where an appeal lies and no appeal is brought, proceedings by way of revision shall not be entertained at the instance of the party who could have appealed. In this case, the District Magistrate could certainly have requested the Government to file an appeal but he did not do so. So under Section 439, Clause (5), Criminal P. C., this reference is not competent. On going through the records. I am satisfied that the evidence is not such as to warrant a conviction of the accused. In this case, I do not wish to interfere with the acquittal.

3. The reference is therefore not accepted.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**