

**In Re: Sudalamadakudumban**

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**SooperKanoon Citation :** [sooperkanoon.com/799708](http://sooperkanoon.com/799708)

**Court :** Chennai

**Decided On :** Jul-30-1941

**Reported in :** (1942)1MLJ48

**Appellant :** In Re: Sudalamadakudumban

**Judgement :**

ORDER

**Horwill, J.**

1. The Stationary Sub-Magistrate of Srivaikuntam found the accused before him guilty of an offence under S.. 324, Indian Penal Code; but as he thought that an order under Section 106, Criminal Procedure Code had to be passed against the accused and he had no power to do so himself, he acted under Section 349 (1), Criminal Procedure Code; and he submitted his proceedings and forward ed the accused to the Sub-Divisional Magistrate to whom he was immediately subordinate. The Joint Magistrate, instead of acting under Section 349 (2), Criminal Procedure Code and disposing of the matter himself, considered the proposal of the Sub-Magistrate that proceedings should be taken under Section 106, Criminal Procedure Code and came to the conclusion that it was not necessary. He there- upon sent the case back to the Sub-Magistrate for disposal. That he had no power to do. Section 349 (2) says:

The Magistrate to whom the proceedings are submitted may, if he thinks fit examine the parties...shall' pass such judgment, sentence or order in the case as he thinks fit, and as is according to law.

It is thus seen that the Magistrate was bound to dispose of the case himself; although he was not, of course, obliged to pass an order of the nature considered appropriate by the Stationary Sub-Magistrate.

2. The order passed by the Joint Magistrate dated the 12th February, 1941 remanding the case to the Sub-Magistrate for disposal is therefore set aside and the Joint Magistrate ordered to dispose of the case according to law under Section 349 (2), Criminal Procedure Code.

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