CRIMINAL REVISION.

Before Mr. Justice Holmwood and Mr. Justice Imam.

EMPEROR

v.

SHEIKH IDOO*

1912

May 24.

Jurisdiction of Criminal Court—Order of discharge by the High Court in its original criminal jurisdiction if bar to fresh proceedings—Criminal Procedure Code (Act V of 1898), s. 190 (c)—Nolle prosequi—Practice.

An order of discharge does not operate as a bar to fresh proceedings being taken before a competent Magistrate upon complaint or upon a police report, or under s. 190(c) of the Criminal Procedure Code.

Mir Ahwad Hossein v. *Mahomed Askari* (1) referred to.

ON an information laid by one Captain Clifford, on the 23rd of September, at the Entally *thanah*, the accused was sent up before the Chief Presidency Magistrate to take his trial for offences under ss. 333 and 366 of the Penal Code. On the 31st of January 1912, the Chief Presidency Magistrate committed the accused to the High Court Sessions under section 366 of the Penal Code.

At the Sessions an indictment was drawn up under sections 363, 366 and 376 of the Indian Penal Code; but before the accused was arraigned, an objection was taken to the trial of the offence under section 376 of the Penal Code, inasmuch as the Sessions Court had no jurisdiction to try the offence of rape which was committed, if at all, outside the local limits of the ordinary criminal jurisdiction of the High Court.

Criminal Revision, No. 532 of 1912, against the order of C. D. Ghose, Deputy Magistrate of Sealdah, dated April 13, 1912.

(1) (1902) I. L. R. 29 Calc. 726

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The Standing Counsel, on behalf of the Crown, intimated that he would not proceed with the charge under that section.

In course of the trial evidence disclosed the offence of rape, which the Sessions Court had no jurisdiction to try.

The Crown therefore decided to enter a *nolle prosequi*, through the Advocate-General, and the learned Judge thereupon discharged the accused.

The accused was subsequently placed on his trial under sections 363, 366 and 376 of the Penal Code before the Police Magistrate of Sealdah; the Magistrate was of the opinion that he could not proceed under sections 363 and 366, and wished only to proceed with the charge under section 376.

A Rule was thereupon obtained by the Standing Counsel to show cause why the trying Magistrate should not proceed with the case under the other two sections.

Mr. K. N. Chaudhuri (with him *Babu Satish Chandra Ghose*), in showing cause, submitted that the only method of instituting fresh proceedings on the same charges was, as in England, either on the exhibition of information by the Advocate-General, or by the order of the Court ordering the discharge of the accused. The proceedings in this case had been wrongly initiated, and it was not correct to say that the Police Magistrate of Sealdah had refused to proceed with all the charges, as he had only refused to go on with the charge of kidnapping.

The Standing Counsel (*Mr. B. C. Mitter*) (with him *Babu Harendra Nath Mitter*), for the Crown, submitted that the *nolle prosequi* entered by the Advocate-General referred to the then indictment, and was confined only to the proceedings before the Sessions Court.

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There was nothing in the Code which was a bar to the reception of the complaint made by the Crown against the accused before the Sealdah Magistrate.

Mr. K. N. Chowdhuri, in reply, referred to *Dwarka Nath Mondul* v. *Beni Madhab Banerjee* (1) and *Mir Ahwad Hossein* v. *Mahomed Askari* (2).

Cur adv. vult.

HOLMWOOD AND IMAM JJ. We think that the question raised on this Rule can be simply answered by pointing out that the order of discharge made by Mr. Justice Stephen cannot be set aside by any tribunal and does not require to be set aside.

Upon all the authorities an order of discharge does not operate as any bar to fresh proceedings being taken before a competent Magistrate upon complaint or upon a Police report or under section 190 (*c*) of the Criminal Procedure Code. This was finally settled in the case of *Mir Ahwad Hossein* v. *Mahomed Askari* (2) by a Full Bench of this Court. If this is the rule of law in the case of Presidency and Provincial Magistrates, where the higher Courts have been specially empowered to interfere and order fresh enquiry, and if in these cases it is unnecessary to set aside the order of discharge or order fresh enquiry, *a fortiori* it is unnecessary in the case of discharge by the High Court in the exercise of its original criminal jurisdiction, where there is no authority that can interfere with the order of discharge. We do not order further enquiry in this case, since it is unnecessary. It is enough for us to lay down that the Magistrate is mistaken in declining jurisdiction which he undoubtedly has, and he is bound to consider and adjudicate on any criminal information properly laid before him against the accused.

S. K. B. *Rule absolute.*

(1) (1900) I. L. R. 28 Calc. 652. (2) (1902) I. L. R. 29 Calc. 726.