

## CRIMINAL REVISION.

*Before Imam and Chapman JJ.*

RAJANI BENODE CHAKRAVARTI

v.

ALL-INDIA BANKING AND INSURANCE Co.\*

1913

July 7.

*Jurisdiction—Trial—High Court—Power to determine venue when several Courts have concurrent local jurisdiction—Absence of any doubt as to which Court has such jurisdiction—Interference on the ground of convenience only—Criminal Procedure Code (Act V of 1898), s. 185.*

Section 185 of the Criminal Procedure Code does not warrant the High Court, within the local limits of whose criminal jurisdiction the offender actually is, in interfering thereunder merely on the ground of convenience, but only when a doubt arises as to the Court by which an offence should be enquired into or tried. Where, therefore, there is no doubt that two Courts are equally competent to exercise jurisdiction, the High Court has no power under the section to interfere.

THE facts of the case were as follows. In June 1908 the "All-India Banking & Insurance Co., Ltd.," was formed with its head office in Amritsar, which office was removed to Lahore about the beginning of 1912. In January 1910 the said Company appointed the firm of Guha, Chakravarty & Co., which carried on business at Chittagong, and of which the petitioners were share-holders and office-bearers, as its agent for East Bengal and Assam. By an agreement entered into between the parties, the petitioners' firm were to secure at least 5,000 subscribers a year, and were to render accounts and pay all monies collected by them to the said Company at its headquarters. It was alleged that on or about

\* Criminal Miscellaneous No. 70 of 1913, against an order of the Additional District Magistrate of Lahore.

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the 31st January 1913 the petitioners' firm received a letter from the head office of the Company intimating its impending insolvency and its intention to reduce the amount of payment to the subscribers, and replied protesting against the proposed reduction.

Shortly after one Surendra Bijoy Biswas lodged a complaint under s. 420 of the Penal Code, before A. C. Guha, Deputy Magistrate of Chittagong, against Babu the petitioners, the managing director and one of the directors of the said Company. A suit was also brought against the petitioners and the said Company, in the Court of the First Munsiff of Chittagong, for recovery of the premium due. On the 27th February 1913, the petitioners' firm adjusted the accounts between them and the Company, and informed the latter that it had a sum of Rs. 239-1-9 to its credit. The Company thereupon, on the 15th March, 1913, instituted a complaint, in the Court of the District Magistrate of Lahore, against the petitioners under ss. 409, 420, 467 and 477 of the Penal Code, and warrants were issued against them.

The petitioners then moved the High Court and obtained the present Rule. They alleged in their application that they were all residents of Chittagong, that the documentary evidence on which they relied for their defence was then under attachment by the local Civil Court and that the offence, if any, was committed in the district of Chittagong.

*Mr. W. Jackson* (with him *Mr. K. N. Chaudhuri* and *Babu Narendra Kumar Bose*), for the opposite party. The High Court has no jurisdiction in this case. Section 185 of the Code does not apply where a complaint has been already instituted in a Court. The party must apply for a transfer to the Governor-General in Council under s. 527.

*Mr. E. P. Ghose* (with him *Babu Khitish Chandra Sen, Babu Probodh Kumar Das* and *Babu Profulla Chandra Bose*), for the petitioners. Section 185 applies not only when there is a doubt as to which Court has local jurisdiction, but also where it is a question whether the one or the other Court should try the case on the grounds of convenience. [IMAM J. referred to *Emperor v. Chaichal Singh* (1).] It is in my favour. Here the accused and their witnesses are all residents of the Chittagong district, the offence, if any, was committed in that locality and the trial should be held there.

*Cur. adv. vult.*

IMAM AND CHAPMAN JJ. The petitioners in this case, who live in Chittagong, are being prosecuted at Lahore for offences under sections 409, 420, 467 and 477 of the Indian Penal Code, at the instance of the All-India Banking and Insurance Company, Limited, of Lahore, in respect of transactions between the parties. The Company's case is that, under the terms and conditions of the agency entered into between the petitioners and the Company, all accounts had to be rendered, and all moneys collected had to be paid by the petitioners, to the Company at its head office at Lahore, and that being so, the offences alleged are triable at Lahore. The petitioners in their petition aver that the offences, if any, were committed within the jurisdiction of the District Magistrate of Chittagong, and they by their present application ask us to decide, under section 185 of the Criminal Procedure Code, as to which Court should try the case. The learned counsel on behalf of the petitioners has mostly pressed us to consider the question of convenience and to decide in favour of the trial being held at

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Chittagong. We do not think that section 185 warrants interference by this Court merely upon the ground of convenience. The decision of the High Court, within the local limits of whose appellate jurisdiction the offender actually is, can only be sought when a doubt arises as to the Court by which an offence should be enquired into or tried. To our mind, there is no doubt that, on the allegations of the prosecution, the Courts at Chittagong and Lahore are equally competent to exercise jurisdiction in this matter. We have no doubtful question to decide, and in this view this Rule must be discharged.

E. H. M.

*Rule discharged.*


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LETTERS PATENT APPEAL.

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*Before Jenkins C.J., and Mookerjee J.*

BENGAL PROVINCIAL RAILWAY CO.

v.

GOPI MOHAN SINGH.\*

1913

July 9.

*Contributory Negligence—Railway Company—Collision—Damages.*

The plaintiff's carriage was damaged by a train of the defendant Company running into it at a level-crossing where the gate had been left open :

*Held*, that, on the findings of fact by the lower Appellate Court, negligence on the part of the defendant Company had been established, and that contributory negligence had not been proved.

LETTERS PATENT APPEAL by the defendant Railway Company from the judgment of D. Chatterjee J.

The suit was for compensation for damages caused to the plaintiff's carriage in a collision with a running

\* Letters Patent Appeal, No. 95 of 1912, in Appeal from Appellate Decree, No. 1868 of 1910.