

CRIMINAL REVISION.*Before Beachcroft and Ghose JJ.*

1921

Jan. 5.

MAHENDRA BHUMIJ

v.

EMPEROR.*

Appeal—Additional District Magistrate—Whether appeal lies to District Magistrate from an order for security to be of good behaviour passed by the Additional District Magistrate—Criminal Procedure Code (Act V of 1898) ss. 10 (2), 406.

An appeal lies under s. 406 of the Criminal Procedure Code from the order of the Additional District Magistrate to the District Magistrate. The Sessions Judge has no appellate authority thereunder.

The facts of the case were as follows. Proceedings under s. 110 of the Code were instituted against the petitioners in July 1920, and they were put on trial before the Additional District Magistrate of Midnapore, who was appointed, under s. 10 (2) of the Code, an Additional District Magistrate with all the powers of the District Magistrate under the Code. After an enquiry the petitioners were each ordered, on the 6th October 1920, to furnish security to be of good behaviour for one year in the sum of Rs. 100 with one surety in the like amount, and in default to undergo rigorous imprisonment for the same period. They were unable to furnish the security and were sent to jail. They then presented an appeal to the District Magistrate of Midnapore who passed the following order:—“This should be filed before the District and Sessions Judge, as the Additional District Magistrate

* Criminal Revision No. 977 of 1920, against the order of E. M. Mannooch, Additional District Magistrate of Midnapore, dated Oct 6, 1920.

“has all the powers of a District Magistrate.” The petitioners then obtained the present Rule.

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Babu Birbhusan Dutt, for the petitioner. An Additional District Magistrate is only a first class Magistrate invested under s. 10 (2) with the powers of a District Magistrate under the Code, and the latter is quite a distinct officer. The District Magistrate exercises powers under various sections of the Code which the Additional District Magistrate does not possess. Refers to ss. 13, 16, 17, 37, 38, 41 (2), 190 (2), 338, 425 and 561. The words “*other than the District Magistrate*” in s. 406 were added to the Code of 1898 expressly to include the Additional District Magistrate.

Babu Manmatha Nath Mukerjee, for the Crown. The District and the Additional District Magistrates have concurrent jurisdiction, and it is against the principles of justice for one Court to hear an appeal from a Court of concurrent jurisdiction. Section 435 shows that the District Magistrate has revisional powers only over inferior Courts which the Additional has not.

Babu Birbhusan Dutt, in reply.

Cur. adv. vult.

BEACHCROFT J. The petitioners before us were directed to give security for their good behaviour under section 118 of the Criminal Procedure Code by Mr. Mannooch, the Additional District Magistrate of Midnapore. Mr. Mannooch had been duly appointed under section 10 (2) of the Criminal Procedure Code to be Additional District Magistrate with all the powers of a District Magistrate under the Code. The petitioners appealed to the District Magistrate who refused to hear the appeals, on the ground that they lay to the

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Sessions Judge. The petitioners then obtained the present Rule calling on the District Magistrate to show cause why he should not hear the appeals.

There is no question that the District Magistrate was mistaken in saying that an appeal lay to the Sessions Judge. The Sessions Judge of course has no appellate powers in the case of a person ordered to give security for good behaviour. The only appellate authority is the District Magistrate. The question is whether section 406 of the Criminal Procedure Code gives him appellate powers in the case of an order made by an Additional District Magistrate. In terms it undoubtedly does, unless an Additional District Magistrate is included in the words "the District Magistrate."

For the petitioners it has been argued that the District Magistrate is a distinct person with special powers given by the Code, whereas an Additional District Magistrate is merely a Magistrate of the first class on whom the special powers of a District Magistrate have been conferred by the Local Government.

We have been referred to various sections of the Code having reference to the powers and duties of a District Magistrate from which, it has been argued, the conclusion is to be drawn that the term, District Magistrate, does not in all cases include an Additional District Magistrate. I do not think any useful purpose will be served by referring to those sections, as in many of them it is an open question whether the provisions of section 10 (2) would not make the particular section applicable to an Additional District Magistrate, and further, sections which deal with the administrative or executive duties of the District Magistrate will not be any sure guide to the solution of the question before us.

An argument for the petitioners which may be noticed is that the words "other than the District Magistrate" were inserted in section 406 expressly to cover the case of an Additional District Magistrate otherwise they are unnecessary, for on general principles a District Magistrate could not hear an appeal from his own order. It is at the same time conceded that an Additional District Magistrate may exercise appellate powers under this section. I do not think this argument conclusive, for even if the words "other than the District Magistrate" were omitted, the same difficulty might arise, though the argument against the petitioners would possibly be strengthened by the omission.

On the other hand, it is argued that the Additional District Magistrate has concurrent jurisdiction with the District Magistrate, and it is contrary to fundamental principles for one Court to sit in appeal over a Court of concurrent jurisdiction; and that section 435 gives us a guide, as by that section the District Magistrate has revisional powers only in the case of orders of an inferior Court, which term could not include the Court of the Additional District Magistrate.

The latter argument does not help us, for appellate powers are not necessarily subject to the same limitations as revisional powers. The former argument is attractive, but not conclusive: appellate power must depend on the words of the statute, which being plain in themselves must be held to have their ordinary significance unless such a construction leads to a result clearly contrary to the intention of the Legislature. Now it cannot be said that it would do so in view of the Full Bench decision in *Nabu Sardar v. Emperor* (1). It was there decided that the powers

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(1) (1906) I. L. R. 34 Cal. 1.

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given by section 125 were not limited in any way, and though the correctness of that decision may be open to doubt, it interprets the law for this Province, and if by the operation of that section a District Magistrate can question on the merits an order of the Additional District Magistrate, being a Court not superior to his, there is nothing anomalous in his being empowered to sit in appeal over that officer.

It might seem unnecessary for the petitioners to press their point in view of the fact that the District Magistrate can interfere under section 125. But the fact that the District Magistrate has the power does not dispose of the matter, for under section 125 it is a matter within his discretion, whereas if an appeal lies under section 406, the District Magistrate is bound to hear it.

In my opinion there is only one person who can be the District Magistrate. Consequently, though an Additional District Magistrate may have all his powers he is "a Magistrate other than the District Magistrate" within the meaning of section 406 of the Code, and consequently an appeal lay to the District Magistrate. I would make the Rule absolute and direct the District Magistrate to hear the appeals.

GHOSE J. I agree.

E. H. M.

Rule absolute.