

## CRIMINAL REVISION.

*Before Sanderson C. J. and Newbould J.*

W. J. GOOD

v.

GUNPAT RAI KHEMKA.\*

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July 24.

*Presidency Magistrate—Jurisdiction outside the limits of Calcutta but within the limits of the Port of Calcutta—Unauthorized erection of wall on the foreshore on the right bank of the Hughli—Dismissal of complaint for absence of complainant—Complainant present at the time by mistake in adjoining Court—Acquittal Criminal Procedure Code (Act V of 1898), ss. 20, 247—Calcutta Port Act (Beng. III of 1890), ss. 138 and 139.*

A Presidency Magistrate has jurisdiction, under s. 20 of the Criminal Procedure Code, read with s. 139 of the Calcutta Port Act (Beng. III of 1890), to try an offence, under s. 84 of the latter, committed outside the limits of the town, but within those of the port of Calcutta.

Where a complainant was present in the Court of a Magistrate who had previously dealt with the case, under the belief that it would be heard by him, but it was taken up and dismissed, under s. 247 of the Code, by the Chief Presidency Magistrate, without the knowledge of the complainant:—

*Held*, that the order of acquittal under s. 247 ought, in the circumstances of the case, to be set aside.

One Gunpat Rai Khemka was the proprietor of land to the north of the Morapara *ghat* at Sulkea on the right bank of the river Hughli. He erected a brick wall on land included in the foreshore and within the limits of the port of Calcutta, without the consent of the Local Government, as required by s. 83 of the Calcutta Port Act. On the 25th March 1919,

\*Criminal Revision Nos. 529 and 560 of 1919, against the order of D. Swinhoe, Chief Presidency Magistrate of Calcutta, dated June 10, 1919.

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he submitted a plan of the intended building to the Port Commissioners who returned the same, on the 7th April, with a plan showing to what extent the work could be sanctioned, and requiring him to demolish the erection beyond such limits on or before the 15th instant. The accused not having complied with the requisition, Mr. Good, Deputy Secretary to the Port Commissioners, filed a complaint, on the 8th May, against the accused Gunpat Rai before Mr. Das Gupta, Third Presidency Magistrate, who was on that date acting for the Chief Presidency Magistrate. Summons was issued and the case fixed for the 20th. On this date it was taken up by the Third Magistrate and postponed to the 31st May and ultimately to the 10th June. In the meantime Gunpat Rai removed the wall or part of it. On the 10th, the case was called on before Mr. Swinhoe, and dismissed under s. 247 of the Code on account of the absence of the complainant. It, however, appeared that the complainant was at the time present in Mr. Das Gupta's Court under the belief that the case would be heard by him. Mr. Good, thereupon, filed a fresh complaint before Mr. Swinhoe, alleging that the accused had removed only a part of the wall and complaining of the obstruction since the 9th May, and a summons was issued under s. 84 of the Port Act.

On the 16th June, the accused moved the High Court and obtained a Rule (to set aside the proceedings before the Chief Presidency Magistrate) which came on for hearing as *Cr. Rev. No. 529 of 1919*. The opposite party also obtained a Rule to set aside the order under s. 247 of the Code, and it was heard as *Cr. Rev. No. 560 of 1919*.

[CRIM. REV. No. 560 OF 1919.] *Babu Dasarathi Sanyal* (with him *Babu Heramba Chandra Guha*), for Mr. Good, stated the circumstances under which

the Chief Presidency Magistrate had dismissed the complaint under s. 247 of the Code.

*Babu Manmatha Nath Mukerjee* (with him *Babu Satindra Nath Mukerjee*), for the petitioner, contended that if their Lordships set aside the order they should also set aside the proceedings on the second complaint. There should be only one trial.

[CRIM. REV. NO. 529 OF 1919.] *Babu Manmatha Nath Mukerjee*. S. 20 of the Criminal Procedure Code must be read subject to ss. 138 and 139 of the Port Act. The Chief Presidency Magistrate has no jurisdiction to try offences committed out of Calcutta but within the Port limits. S. 139 applies in such a case; and the Magistrates of Howrah, having local jurisdiction, would have power to try the case. The reference to the Code is as to the mode of trial. If s. 20 of the Code applied to port offences outside the town, ss. 138 and 139 would be unnecessary. Refers to ss. 1 and 29 of the Code which save the power of the special forum under a local law. Compares ss. 138 and 139 with corresponding sections 79 and 80 of the old Port Act (Beng. V of 1870). "*Police Magistrate*" in s. 79 refers to Magistrates mentioned in Act IV of 1866 (B.C.) s. 3, who are now Presidency Magistrates; and the words "*officer authorized to exercise any of the powers of a Magistrate*" point to s. 15, Code 1861, and do not include a Presidency Magistrate.

*Babu Dasarathi Sanyal* was not called upon to reply.

SANDERSON C. J. Two Rules have been issued, one No. 529 and the other No. 560, and they were in connection with certain proceedings which were taken against one Gunpat Rai Khemka, who was alleged to have committed a breach of the provisions contained in section 83 of the Calcutta Port Act of 1890, and to

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have committed an offence under section 84. The proceedings were taken before Mr. Das Gupta who, on the 8th of May of this year, was acting, as we have been informed, on behalf of the Chief Presidency Magistrate; and the most important point which has been raised in respect of Rule No. 529 is whether the Presidency Magistrate had jurisdiction over the matter. The alleged offence admittedly took place outside the limits of Calcutta, but admittedly within the limits of the port of Calcutta: and the argument of the learned vakil, who obtained the Rule in 529, shortly stated, is that, although the Presidency Magistrate may have jurisdiction outside the limits of Calcutta but within the limits of the port of Calcutta for certain offences, he has no jurisdiction outside the limits of Calcutta and within the limits of the port, in respect of offences against the Calcutta Port Act, and he further contended that the intention of the Port Act of 1890 was that the trial of offences under that Act should take place before the Tribunals especially appointed by that Act. This question depends upon the provisions contained in sections 138 and 139 of the Calcutta Port Act and in my judgment also upon section 20 of the Code of Criminal Procedure of 1898. Section 138 of the Calcutta Port Act provides:—"Every charge of an offence against any provision of this Act . . . alleged to have been committed within Calcutta, may be instituted before any Magistrate having jurisdiction." That section makes it clear that an offence committed against any provisions of this Act within the limits of Calcutta might be tried before the Presidency Magistrate. That is not disputed. Then comes section 139 which provides:—"Every charge of an offence against the provisions of this Act . . . . . alleged to have been committed out of Calcutta, may be heard and determined by any officer authorized to

“exercise any of the powers of a Magistrate in the place in which such offence may be alleged to have been committed, according to the provisions of the Code of Criminal Procedure, 1882.” The learned vakil argued that the last words “according to the provisions of the Code of Criminal Procedure, 1882” regulate the mode of trial. As at present advised I am inclined to agree with the interpretation which the learned vakil puts upon those words, although that is not necessary for the decision of this case. The learned vakil has drawn our attention to the difference in language of the two sections in describing the tribunal:—in section 138 the words are “any Magistrate having jurisdiction,” and in section 139 the words are “any officer authorized to exercise any of the powers of a Magistrate in the place in which such offence may be alleged to have been committed:” and he has drawn our attention to certain previous Acts which, he contends, show the origin of those words, inasmuch as he pointed out that there were certain persons who were authorized to exercise some of the powers of a Magistrate, although they might not be authorized to exercise all the powers of a Magistrate. But to my mind, the difference in the words used in section 138 and those used in section 139 does not conclude the point, because the words in section 139, “any officer authorized to exercise any of the powers of a Magistrate in the place” do not specify the tribunal without reference to some other Act, and we have to see what officer is authorized to exercise any of the powers of the Magistrate in the place in which the offence in this case is alleged to have been committed. As I have said, admittedly the alleged offence was committed within the limits of the port of Calcutta. When we look at section 20 of the Criminal Procedure Code we find as

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follows:—“ Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency town for which he is appointed, and within the limits of the port of such town . . . . . as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.” Therefore, it seems to me that the Presidency Magistrate is “an officer authorized to exercise the powers of a Magistrate” within the limits of the port of Calcutta, and inasmuch as the offence is alleged to have been committed within such limits, he has jurisdiction to hear the complaint which was lodged against the petitioner.

The other Rule, No. 560, dealt with the acquittal of Gunpat Rai Khemka. I need not go into all the facts which led up to the acquittal of Gunpat Rai Khemka.

It appears, however, that on the 10th June 1919, the complainant and his attorney were present in Mr. Das Gupta's Court, which Court had dealt with the case on certain previous occasions when adjournments were granted: and, without their knowledge, the case was called on before the Chief Presidency Magistrate himself, and as the complainant and his attorney were not present, the Chief Presidency Magistrate acquitted Gunpat Rai Khemka. I think that, inasmuch as it was clearly owing to a misunderstanding (for which the complainant and his attorney were not responsible) that they were not present before the Chief Presidency Magistrate, the order of acquittal ought to be set aside. The result will be that, both parties having agreed that there should not be two trials, the hearing of the first complaint will proceed, and the other complaint which was lodged afterwards, will be set aside.

Therefore, Rule No. 560 is made absolute; and, Rule No. 529 is made absolute to the extent that the second prosecution is quashed.

NEWBOULD J. I agree with my Lord the Chief Justice.

I only wish to add something in reply to the argument that if the Presidency Magistrate had jurisdiction under the Criminal Procedure Code to try this offence, it would not have been necessary to make the provisions contained in the first part of section 138 and the whole of section 139 of the Calcutta Port Act III of 1890. It appears to me that these provisions were made through excess of caution, and were based upon the provisions of section 29 of the Criminal Procedure Code. That section provides that trials of offences under laws other than the Indian Penal Code such as the Port Act, shall, when any Court is mentioned, in this behalf in such law, be tried by such Court. I think the drafters of the Act had that section in their minds, and thought it desirable to provide in the Act for the tribunal in which offences under it should be tried, and consequently introduced into section 139 words similar to those in section 20, with the intention of leaving no doubt that offences under the Act should be tried, when committed out of Calcutta but in the port of Calcutta, by a Presidency Magistrate who has been authorized to exercise jurisdiction by section 20 of the Code of Criminal Procedure.

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