

## CRIMINAL REVISION.

Before Newbould and Sukrawardy JJ.

HARI SATYA BISHNU

1923

v.

Jan. 12.

EMPEROR.\*

*Cognizance of offence--Cognizance of an offence by one Magistrate—Power of another Magistrate to take subsequent cognizance of same offence while the former has seisin of the case—Criminal Procedure Code (Act V of 1898), s. 190.*

A Magistrate is not debarred by any provision in the Criminal Procedure Code from taking cognizance of an offence only because another Magistrate has already taken cognizance of the same and is in seisin of the case, and a multiplicity of trials can be avoided by transfer of the cases to one of them.

THE facts of the case were as follows. In 1920, the petitioners, Hari Satya Bishnu and his brother Shiva Satya, started a firm in Howrah under the name of *Charles, Dygambar & Co.*, of which one J. Evans became a manager in 1921. They advertised for paid agents, who were required to deposit, on appointment, a certain sum as security. Agents were thus secured on salaries ranging from Rs. 50 to Rs. 150, and deposits received from them varying from Rs. 500 to Rs. 5,000. It appeared that the firm paid the agents for a few months, and then declared their deposits forfeited on various pretexts. At the end of 1921 the petitioners and others floated a company styled "*Charles, Dygambar & Co. (India)*," which was registered in Calcutta in January 1922. The firm transferred its business and agencies to the new company. A prospectus was issued and shares called for. The old agencies were continued, and application

\* Criminal Revision No. 985 of 1922 against the order of C. W. Gurner, District Magistrate of Howrah, dated Oct. 10, 1922.

money for shares collected to the amount of Rs. 1,700.

On 30th March 1922 one David Parke, a shareholder, lodged an information before the Howrah police against the petitioners and J. Evans alleging that he had been cheated by them of Rs. 200. A police investigation followed, and it then transpired that 19 agents and several share-holders had been cheated. A charge sheet was sent in to Mr. B. N. Mukherjee, Deputy Magistrate, Howrah, and on the 16th April the petitioners appeared before him and were released on bail. The case was adjourned on the application of the police pending further investigation. On the 30th April the Howrah police sent to the same Magistrate a charge sheet against the petitioners and C. Widgery under ss.  $\frac{120B}{420}$  of the Penal Code on the information of one Attar Sain of Dehra Dun. A similar charge sheet was also put up before the same Magistrate, on the 4th May, against the petitioners and C. Widgery, on the information of one Lala Ganga Prasad of Khurja. The three cases remained pending on the file of Mr. B. N. Mukherjee, without any evidence having been recorded, till 28th June. On that date one R. M. Bose, police inspector, filed a complaint before the District Magistrate of Howrah, against the petitioners and J. Evans, under ss.  $\frac{120B}{420}$  of the Penal Code, of conspiracy to cheat generally. The cases of Attar Sain and Lala Ganga Prasad were mentioned in the complaint, but it was alleged therein that other agents and some share-holders had also been cheated. The names of these agents and share-holders were not specified. The District Magistrate took cognizance on the complaint, and fixed dates of hearing. Thereafter the Court Inspector applied, on the same day, to Mr. B. N. Mukherjee to postpone his cases *sine die*, but the Magistrate, in effect, discharged

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the accused. The case then proceeded before the District Magistrate, and after a prolonged inquiry he committed the petitioners and J. Evans on charges under ss. <sup>120B</sup><sub>420</sub> of the Penal Code, as regards the security deposits of Satish Chandra of Bareilly, Lala Ganga Prasad of Khurja and Basanta Behari of Sikabad and the application monies paid by Parke, Stewart and others, and under s. 467, in respect of a forged receipt.

The petitioners obtained a Rule on the ground stated in the judgment of the High Court. The Magistrate submitted an explanation stating that the case before him was not the same as those which were on the file of Mr. B. N. Mukherjee.

*Babu Manmatha Nath Mukerji*, for the petitioners, Under s. 190 of the Code a Magistrate takes cognizance of an *offence* and not of an offender. Mr. B. N. Mukherjee took cognizance of the offence of conspiracy, and the District Magistrate entertained a complaint of the same conspiracy, though the offenders were not all the same, and did so while the first Magistrate still had seisin. This course was illegal, and the order of commitment is bad: *Dedar Buksh v. Syamapada Das Malakar* (1).

*Mr. B. L. Mitter* (with *Mr. Sunanda Sen*), for the Crown. The petitioners were not prejudiced. There is no provision in the Code which debarred the District Magistrate from taking cognizance, and under s. 190 he was even bound to do so. If several Magistrates take cognizance of the same offence, one trial can be secured by transfer of the cases to one of them. S. 403 does not apply.

*Babu Manmatha Nath Mukherjee*, in reply.

NEWBOULD J. The two petitioners have been committed for trial on the charge of conspiring to

(1) (1914) 1. L. R. 41 Calc. 1013.

commit the offence of cheating punishable under section 120B and section 420 of the Penal Code. The Rule is to show cause why that commitment should not be quashed on the ground that the offence of conspiracy having already been taken cognizance of by Mr. B. N. Mukherjee, Deputy Magistrate, no other Magistrate had jurisdiction to take cognizance of it again so long as Mr. B. N. Mukherjee was in seisin of the case, and, therefore, the proceedings before the learned District Magistrate have been wholly *ultra vires*, and are fit to be set aside.

It appears that on three separate police reports Mr. B. N. Mukherjee took action against the petitioners and others in respect of this conspiracy, and "required them to give bail to answer the charge. The cases before Mr. B. N. Mukherjee remained pending, and no evidence was taken up to the 28th June. On the 28th June a formal complaint was laid before the District Magistrate by the police charging the petitioners and other persons with being members of this conspiracy, and on that complaint the District Magistrate took proceedings which ended in the commitment of these petitioners to the Court of Session. On the day when the District Magistrate took cognizance of this complaint, Mr. B. N. Mukherjee passed an order which amounted to a discharge of the persons who were appearing before him in the cases of which he had taken cognizance in connection with this conspiracy.

We are unable to hold that there is any illegality in the District Magistrate taking cognizance of the case which would justify us in quashing this commitment on a point of law. In the first place, it must be remembered that no prejudice against the petitioners has been alleged, and it would appear that it was rather to their benefit that the case against them

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should be dealt with in one single proceeding rather than before the Deputy Magistrate in three separate proceedings. We have not been shown that there is any provision of the Criminal Procedure Code which prevented the Magistrate from taking cognizance of the offence because another Magistrate had previously taken cognizance. The law prevents a person being tried twice for the same offence. But there is no provision that if, as in this case, cognizance is taken by two different Magistrates at different times the trial can be before one of them only. There seems to be no reason why the trial should not proceed before either of the Magistrates who have taken cognizance, irrespective of the one having taken cognizance before or after the other. The only section of the Code which in any way renders duplicate proceedings illegal, is section 403 which has no application whatever to the present case. But multiplicity of trials can always be prevented by the sections providing for the transfer of cases. But here is no question of multiplicity of trials. There has been only one trial, and, unless the District Magistrate's action in taking cognizance was in itself illegal, there was no illegality in that trial. I hold that there was no illegality on the part of the District Magistrate in taking cognizance of the case, and, therefore, there is no ground for quashing the commitment. The Rule is discharged.

SUHRAWARDY J. I agree in the order proposed to be passed. I wish to add that I am not convinced that the complaint which was subsequently filed before the District Magistrate was, for all practical purposes, the same as that which was filed and taken cognizance of by the Deputy Magistrate.

E. H. M.

*Rule discharged.*