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 OF STATE
 FOR INDIA
 v.
 JATINDRA
 NATH
 CHOWDHURY.

The argument did not go so far as to suggest that this record is in any way impeachable. In these circumstances the map point may be said not to be left in doubt, but to disappear.

Their Lordships will humbly advise His Majesty that the decree of the High Court should be set aside and the suit dismissed with costs here and below.

Solicitor for the appellant: *Solicitor, India Office.*

Solicitor for the respondents: *Douglas Grant.*

A. M. T.

CRIMINAL REVISION.

Before Greaves and Duval JJ.

MOHINI MOHAN ROY

v.

PUNAM CHAND SETHIA.*

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 April 15.

Chief Presidency Magistrate—Power of, to withdraw case made over by the Additional Chief Presidency Magistrate to another Presidency Magistrate for disposal—Criminal Procedure Code (Act V of 1898), ss. 18 (4), 21 (2)—Local Government Notifications Nos. 6786J and 6787 J.

The Chief Presidency Magistrate has power, under s. 528 of the Criminal Procedure Code, to withdraw a case made over by the Additional Chief Presidency Magistrate to another Presidency Magistrate for disposal :

Santhappa Sethuram v. Govindaswamy Kandiyar (1) and *Thaman Chetti v. Alagiri Chetti* (2) relied on.

Raghunatha Pandaram v. Emperor (3) not followed.

* Criminal Miscellaneous Case No. 17 of 1924, against the order of T. Roxburgh, Chief Presidency Magistrate, Calcutta, dated Jan. 30, 1924.

(1) (1916) I. L. R. 40 Mad. 791. (3) (1902) I. L. R. 26 Mad. 130,
 (2) (1890) I. L. R. 14 Mad. 399. 132.

ON the 13th November 1923 the petitioner filed a complaint, in the Court of the Additional Chief Presidency Magistrate, against the opposite party, Punam Chand, under section 406 of the Penal Code. The case was subsequently transferred by the above mentioned Magistrate to the Fourth Magistrate for disposal. The latter issued a summons against Punam Chand, who thereupon applied to the Chief Presidency Magistrate to withdraw the case to his own file. The Chief Presidency Magistrate accordingly withdrew the case by his order dated the 30th January 1924. The petitioner then obtained the present Rule.

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Mr. B. C. Chatterjee (with him *Babu Tarakeswar Pal Chowdhury* and *Babu Phanindra Nath Mukerjee*) showed cause. By notification No. 6786 J., the Additional Chief Presidency Magistrate has power only to withdraw but not to recall. The power to recall a case is only in the Chief Presidency Magistrate. Under the second notification, the Additional is subordinate to the Chief Presidency Magistrate who may, therefore, withdraw a case sent by the former to another Presidency Magistrate. Refers to ss. 17 and 21 and *Santhappa Sethuram v. Govindaswamy Kandiyyar* (1), *Thaman Chetti v. Alagiri Chetti* (2).

The Officiating Deputy Legal Remembrancer (*Mr. Khondkar*), for the Crown., The Chief Presidency Magistrate did not exercise appellate jurisdiction by withdrawing the case on the grounds of convenience.

Mr. Langford James (with him *Babu Satindra Nath Mukerjee*), for the petitioner. Under section 528 (2) of the Code the Chief Presidency Magistrate can "withdraw" a case: the same power is given to the Additional Chief Presidency Magistrate. They have concurrent jurisdiction, and if the former can withdraw

(1) (1916) I. L. R. 40 Mad. 791. (2) (1890) I. L. R. 14 Mad. 399.

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a case transferred by the latter he would be sitting in judgment over a Magistrate having co-ordinate powers. Further various anomalies would result. Both Magistrates could withdraw the same case in turn, and the Additional could withdraw a case sent by the Chief Presidency Magistrate to another Presidency Magistrate. The position of the Additional Chief Presidency Magistrate is not the same as that of the Additional District Magistrate. Refers to ss. 10 (3) and 18 (4). The cases cited are distinguishable. The High Court can alone transfer this case. The order of the Chief Presidency Magistrate is *ultra vires*.

GREAVES J. On the 13th November last the Secretary of the Nawab of Murshidabad complained to the Additional Chief Presidency Magistrate of criminal breach of trust by one Punam Chand Sethia in respect of certain jewellery.

The Additional Chief Presidency Magistrate took cognizance of the offence, and after examining the complainant directed the police to enquire and report.

On the matter coming back to the Additional Chief Presidency Magistrate a judicial enquiry was asked for by the complainant, and the Additional Chief Presidency Magistrate thereupon transferred the case for disposal to the Fourth Presidency Magistrate. This Magistrate, after examining witnesses, ordered the issue of summons against Punam Chand Sethia on the 19th January 1924. On the 28th January Punam Chand applied to the Chief Presidency Magistrate asking, on the ground of jurisdiction, that the case should be recalled to his file, and that the trial should take place in his Court. The Chief Presidency Magistrate, having ascertained that the Fourth Presidency Magistrate had no objection, on the 30th January,

withdrew the case from the file of the Fourth Presidency Magistrate and transferred it to his own file under section 528 of the Code of Criminal Procedure. It is said that the Chief Presidency Magistrate had no power to make this order, and hence this Rule.

Section 18 (4) of the Criminal Procedure Code empowers the Local Government to appoint an Additional Chief Presidency Magistrate, and provides that he shall have all or any of the powers of a Chief Presidency Magistrate under the Criminal Procedure Code as the Local Government may direct. Section 21 (2) of the same Code empowers the Local Government to declare and define his subordination to the Chief Presidency Magistrate and the extent thereof.

By notification No. 6786J., dated the 23rd October 1923,* the Local Government appointed Mr. Das Gupta as Additional Chief Presidency Magistrate, and

* GOVERNMENT OF BENGAL, JUDICIAL DEPARTMENT.

Notification.

No. 6786J., dated Darjeeling, the 23rd October 1923.—In exercise of the powers conferred by sub-section (4) of section 18 of the Code of Criminal Procedure, 1898 (Act V of 1898), the Governor in Council is pleased to appoint Rai Kumud Bandhu Das Gupta Bahadur, Presidency Magistrate, Calcutta, to be Additional Chief Presidency Magistrate, Calcutta, and to authorise him to exercise the following powers of a Chief Presidency Magistrate :—

(1) Under sections 124 and 125, Criminal Procedure Code, to release prisoners bound down, to reduce amounts of security and number of sureties and to cancel bonds.

(2) Under section 144, Criminal Procedure Code, to issue injunctions.

(3) Under section 192, Criminal Procedure Code, to transfer cases.

(4) Under section 476, Criminal Procedure Code, to entertain complaints made by other Courts in certain cases requiring such complaints under section 195, Criminal Procedure Code.

(5) Under section 514, clause (3) to endorse warrants of attachment of property in his jurisdiction.

(6) Under section 528 to withdraw cases.

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Secretary to the Government of Bengal

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authorised him to exercise the powers of a Chief Presidency Magistrate therein mentioned including the power under section 528 to withdraw cases. He was not given the power of recalling cases.

By a notification No. 6787J., of the same date* the Local Government, in exercise of the powers conferred by section 21 (2) of the Criminal Procedure Code, declared the Additional Chief Presidency Magistrate to be subordinate to the Chief Presidency Magistrate. On behalf of the petitioner it is said that the Chief Presidency Magistrate had no jurisdiction to make the order as the case had been transferred by the Additional Chief Presidency Magistrate, and that inasmuch as he had not been given the power to recall a case to his own file, which he had once transferred, the order could only have been made by this Court. On behalf of the accused it is said that the Chief Presidency Magistrate has made an order withdrawing the case to his own file, and that he has power to make such order. We were referred to section 17 of the Code of Criminal Procedure which makes Magistrates subordinate to the District Magistrate, and to section 21 of the same Code which by sub-section (d) confers on the Chief Presidency Magistrate the same powers given to a District Magistrate by section 17.

It is said that a District Magistrate could have made the order in question, and that, therefore, the Chief Presidency Magistrate can make the order, and

* No. 6787J., dated Darjeeling, the 23rd October 1923.—In exercise of the powers conferred by sub-section (2) of section 21 of the Code of Criminal Procedure, 1898 (Act V of 1898), as modified up to 1st September 1923, the Governor in Council is pleased to declare the Additional Chief Presidency Magistrate, Calcutta, to be subordinate to the Chief Presidency Magistrate, Calcutta.

By order of the Governor in Council,

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Secretary to the Government of Bengal.

we were referred to *Raghunatha Pandaram v. Emperor* (1). It was there held by Mr. Justice Bashyam Ayyangar that a District Magistrate had no power to cancel an order made by a Subdivisional Magistrate directing the transfer, under section 528 of the Criminal Procedure Code, of a case from the file of one Subdivisional Magistrate to that of another Subdivisional Magistrate, and to direct the retransfer of the case to the file of the Subdivisional Magistrate from whom it was transferred as in the matter of transfer under section 528 of the Criminal Procedure Code the District Magistrate and the Subdivisional Magistrate had coordinate authority over Magistrates subordinate to the Subdivisional Magistrate, and that his order cannot be appealed against to the District Magistrate. The learned Judge at p. 132, however, adds this remark: "It may be that under section 528 a case once transferred from one Magistrate to another may be withdrawn from the latter by the District Magistrate or even by the Subdivisional Magistrate, and that he may enquire into or try such case himself or refer it for enquiry or trial to some other competent Magistrate on a substantive application that it is inexpedient that the Magistrate to whom it had been transferred should enquire into or try the case."

The case of *Raghunatha Pandaram v. Emperor* (1) was dissented from by a Division Bench of the Madras High Court in *Santhappa Sethuram v. Govindaswamy Kandiayar* (2) who followed and approved *Thaman Chetti v. Alagiri Chetti* (3), where it was held that a Magistrate who is subordinate to a Subdivisional Magistrate is also subordinate to the District Magistrate within the meaning of section 528, and that section 17 of the Criminal Procedure Code, which

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declares such Magistrate to be subject only to the general control of the District Magistrate, cannot be so construed as to take away the special power conferred by section 528.

In that case a Joint Magistrate transferred a complaint from a second class Magistrate to a Taluk Magistrate, and the District Magistrate transferred it back.

I think the principles of this case, with which I respectfully agree, apply to the case before us.

The Additional Chief Presidency Magistrate is subordinate to the Chief Presidency Magistrate, and I think the Chief Presidency Magistrate had power, under section 528 of the Criminal Procedure Code, to make the order which he did withdrawing the case to his file.

We have not considered the order on its merits, as the matter was not argued before us on those lines, and our decision relates only to the power of the Chief Presidency Magistrate to make the order which he has made. I would discharge the Rule.

DUVAL J. I concur

E. H. M.