

## CRIMINAL REVISION.

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*Before Chotzner and Gregory JJ.*

HEMENDRA NATH SEN.

*v.*

EMPEROR.\*

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*Cognizance—Transfer—Trying Magistrate, powers of—Criminal  
Procedure Code (Act V of 1898), s. 190 (1)(c).*

Where after issue of process a case was transferred to another Magistrate, who discharged that accused and *suo motu* issued process against another person under section 190 (1) (c) of the Code of Criminal Procedure.

*Held*, that the trying Magistrate stood in the shoes of the Magistrate, who had originally issued process, and had full authority to deal with this new case as if the former Magistrate himself had taken cognizance of it.

*Khudiram Mookerjee v. Empress* (1) distinguished.

RULE obtained by Hemendra Nath Sen, accused.

On the 21st March 1927 Mr. B. Bhowmic, Deputy Magistrate, Dinajpur, issued summons under section 420, Indian Penal Code, against one Jaduram *alias* Gajaram, the allegations against him being that he had induced one Kali Charan Deshi to part with Rs. 550 on the false representation that the money was wanted by Hemendra Nath Sen, a Sub-Inspector of Police, —the present accused— for releasing one Bindha who had been arrested in connection with an investigation in a murder case. On the 22nd July 1927 the case was transferred to the file of Mr. S. N. Dutt, Deputy Magistrate, for disposal. On the 22nd August 1927 the trying Magistrate passed orders discharging the then accused, Jaduram *alias* Gajaram, under section 253,

\* Criminal Revision No. 1095 of 1927, against the order of S. N. Dutt, Deputy Magistrate of Dinajpore, dated Aug. 22, 1927.

Criminal Procedure Code, and he issued summons against the petitioner under section 161 read with sections 511, 317 and 323, Indian Penal Code, stating *inter alia* that the evidence in the case against the said Jaduram disclosed a *prima facie* case against the petitioner under those sections. Mr. S. N. Dutt took cognizance of this new case against the Sub-Inspector of Police (the petitioner in the High Court) under section 190 (1)(c) of the Code of Criminal Procedure. On the 21st September 1927 the District Magistrate of Dinajpur transferred the case pending against the petitioner to the file of Mr. K. Ahmed, Sadar Sub-Divisional Magistrate, for disposal and on the same date the petitioner made an application before Mr. K. Ahmed, praying for time to move the High Court for quashing the proceeding, contending that Mr. S. N. Dutt had no jurisdiction to take cognizance of the offence under section 190 (1) (c), Criminal Procedure Code, and that the proceedings against the petitioner were bad in law. Thereupon the accused moved the High Court and obtained a Rule.

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*Babu Mritunjoy Chattopadhyaya and Babu Manindra Nath Bannerjee*, No. II, for the petitioner.

*The Deputy Legal Remembrancer (Mr. Khundkar)*, for the Crown.

CHOTZNER AND GREGORY JJ. This Rule was granted on the ground that the learned Magistrate, Mr. S. N. Dutt, not having any jurisdiction to take cognizance of the offence under section 190 (c), Code of Criminal Procedure, the proceedings instituted against the petitioner are bad in law and should be quashed. There is no dispute about the facts, which are that one Jaduram was summoned by Mr. Bhowmic, Deputy Magistrate of Dinajpur, under section 420, Indian Penal Code, on the ground that he induced the complainant

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Kali Charan Deshi, to pay him a matter of Rs. 550 on the false representation that that money was to be paid to the present petitioner, Hemendra Nath Sen, a Sub-Inspector of Police, in order to secure the release of one Bindha, who had been arrested in connection with an investigation in a case of murder. The case was subsequently transferred under the orders of this Court by the District Magistrate from the file of Mr. Bhowmic to the file of Mr. S. N. Dutt, another Deputy Magistrate, for trial. The Magistrate after recording the evidence found that the case against Jaduram had not been substantiated, but that there was a strong case against the present petitioner and he, therefore, directed summons to issue against him under section 161 read with section 511, sections 347 and 323 of the Indian Penal Code. Mr. Chatterji, who has appeared on behalf of the petitioner, contends that Mr. Dutt had no authority to issue processes and that the only person, who was competent to take such action, was Mr. Bhowmic before whom the original petition of complaint was filed. He further points out that the petitioner was examined as a witness in the case and he says, on the authority of the case of *Khudiram Mookerjya v. Empress* (1), that the action of the Magistrate was illegal. It is contended by Mr. Khundkar on behalf of the Crown that the original petition of complaint filed by Kali Charan Deshi was in itself sufficient to justify the issue of processes against the petitioner and that Mr. Dutt, to whom the trial had been transferred, stood exactly in the same position as Mr. Bhowmic, who had taken cognizance on the original complaint.

In our opinion, this Rule should be discharged. The petition of Kali Charan Deshi makes it perfectly

(1) (1896) 1 C. W. N. 105.

clear that the present petitioner was *prima facie* instrumental for the demand of the bribe. If Mr. Bhowmic, who took cognizance of the offence, as he did, under section 190(a), Code of Criminal Procedure, had chosen to issue process against the petitioner, no possible objection could have been taken. Mr. Dutt, to whom the case was transferred by the District Magistrate under the provisions of section 192, Code of Criminal Procedure, stood in the shoes of Mr. Bhowmic and he had full authority to deal with the case as if he himself had taken cognizance of it. The facts cited in Khudiram's case to which we have referred do not seem to us to have any bearing on the present case.

For these reasons this Rule must be discharged.

G. S.

*Rule discharged.*

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### CIVIL RULE.

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*Before Chótzner and Gregory JJ.*

MANIR AHAMED CHOWDHURY

*v.*

JOGESH CHANDRA ROY\*.

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*Sanction—Complaint—Appeal Court's powers—Criminal Procedure Code (Act V of 1898), s. 476 B.*

In an appeal under section 476 B., Criminal Procedure Code, the Appellate Court has no jurisdiction to remand the case directing the Court of first instance to file a complaint, but must do so itself.

Rule obtained by Manir Ahamed Chowdhury, respondent.

In a suit brought by Jogesh Chandra Roy against Manir Ahamed Chowdhury in the Court of the Subordinate Judge of Chittagong the defendant produced

\*Civil Revision No. 13 of 1927, against order of R. F. Lodge, District Judge of Chittagong, dated Sep. 9, 1927 reversing the order of L. Rahaman, Subordinate Judge of Chittagong, dated May 28, 1927.

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