

**CRIMINAL REVISION.***Before C. C. Ghose and Cammiade, JJ.***BUDHU TATUA***v.***EMPEROR.\***

1927

April 27.

*Jurisdiction—Case submitted by Magistrate having no jurisdiction to try it—Transfer of case to Magistrate having jurisdiction—Conviction by the latter on evidence partly recorded by the former—Legality of the conviction—Criminal Procedure Code (Act V of 1898), ss. 346 and 350(2).*

When a case is submitted by a second class Magistrate to the Sub-divisional Magistrate, on the ground that the offence constituted by the evidence appears to be one which he is not competent to try, and the case is then referred by the Subdivisional Magistrate to a Magistrate competent to try the same, the latter cannot act on the evidence recorded by the second class Magistrate, and a conviction based partly on such evidence is bad in law.

On the 18th April the Government Railway Police sent up the petitioner before the Subdivisional Magistrate of Serampore on a charge of having sold some expired and forged railway tickets to several persons, and of having cheated them of various sums. The Magistrate transferred the case to Mr. R. L. Mukherjee, a second class Magistrate, who examined-in-chief nine prosecution witnesses. He then returned the case to the Subdivisional Magistrate with a report that it appeared to be one under Penal Code, section 420 or some other graver section, and

\* Criminal Revision No. 85 of 1927, against the order of H. M. Lyne, Sessions Judge, Hooghly, dated Dec. 18, 1926.

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therefore, beyond his competence to try. The Sub-divisional Magistrate thereupon referred the case, on the 18th May, to Maulvi Mohomed Yahya, a first class Magistrate, for disposal. This Magistrate, after examining three more prosecution witnesses, went on leave, and the case was thereupon transferred to Mr. T. N. Gupta, a first class Magistrate. The accused did not desire a trial *de novo*, either before Mr. Yahya or Mr. Gupta. The latter Magistrate, after examining some more prosecution witnesses, framed a charge against the petitioner under Penal Code, section 420, and an alternative charge under sections 417 and 471. On the 28th August he acquitted the petitioner under section 420, but convicted him under section 471, partly on the evidence recorded by Mr. Mukherjee, and sentenced him to imprisonment. An appeal against the conviction and sentence was dismissed on the 18th December.

The petitioner then obtained the present Rule on the ground that the conviction having been passed on evidence partly recorded by a Magistrate, who had no jurisdiction to try the case, is illegal. The trial Magistrate stated in his *Explanation* that the objection was not taken before him or on appeal.

*Babu Mrityunjoy Chatterjee* and *Babu Gopal Chandra Mukerji*, for the petitioner.

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

GHOSE AND CAMMIADE JJ. In this case we are of opinion that the Rule must be made absolute. We have examined the record for ourselves, and we are satisfied that Mr. Mukherjee, who had second class powers and to whom the case was

transferred, had no jurisdiction to try the case against the accused under section 471. The evidence recorded by him could not be legally considered by the Magistrate to whom the case was ultimately transferred and who had jurisdiction in the matter. The result was that part of the evidence was recorded by a Magistrate who had no jurisdiction, and part of the evidence by a Magistrate who had jurisdiction. In this view the petitioner has made good the ground on which the Rule was issued, and we, accordingly, set aside the order. But in the circumstances of the case we order a re-trial of the accused in accordance with law in that behalf.

E. H. M.

*Rule absolute.*


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**APPELLATE CIVIL.**


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*Before Panton and Mitter JJ.*

NEPRA

v.

SAYER PRAMANIK.\*

*Deed, attestation of—Presence of witness at actual execution, if necessary—Acknowledgment of signature by executant—Statute, retrospective operation of—Transfer of Property Act (IV of 1882), s. 59—Transfer of Property Amendment Act (XXVII of 1926).*

Where a mortgage bond was executed before the commencement of the Transfer of Property Amendment Act of 1926, attestation of the deed within the meaning of section 59 of the Transfer of Property Act of 1882 was required to be made by the witnesses who actually saw the execution of the deed for its validity. Mere acknowledgment of the signature by the executant is not sufficient.

\* Appeal from Appellate Decree, No. 294 of 1924, against the decree of Basanta Kumar Pal, Subordinate Judge of Bogra, dated Aug. 20, 1924, confirming the decree of Prafulla Kishore Ghose, Munsif of Bogra, dated Nov. 21, 1923.

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