

## ORIGINAL CRIMINAL.

*Before Buckland J.*

EMPEROR.

v.

GIRISH CHANDRA KUNDU.\*

1929.

Mar. 8.

*Commitment—Commitment for an offence under section 103 of the Presidency-towns Insolvency Act (III of 1909), if legal—Amendment to section 104 by Act (IX of 1926), object of—Judge exercising Original Criminal Jurisdiction, if can quash commitment—Presidency-towns Insolvency Act (III of 1909), ss. 103 and 104—Criminal Procedure Code (Act V of 1898), ss. 215, 254.*

Under section 104 of the Presidency-towns Insolvency Act, read with section 254 of the Code of Criminal Procedure, a commitment to the High Court Sessions for an offence referred to in section 103 of the Insolvency Act is illegal, such a case being a warrant case punishable with rigorous imprisonment for two years only.

*Queen-Empress v. Kayemullah Mandal* (1), *Emperor v. Dharam Singh* (2) and *Emperor v. Bindeshri Goshain* (3) referred to.

Under section 215 of the Code of Criminal Procedure, a Judge of the High Court, exercising Original Criminal Jurisdiction, can quash a commitment made to it.

*Phanindra Nath Mitra v. Emperor* (4) and *Emperor v. Mahadeo Bhujia* (5) referred to.

*The Government Counsel Mr. A. K. Basu, for the Crown.*

*Mr. A. N. Chaudhuri and Mr. B. N. Das, for the 1st accused, Girish Chandra Kundu.*

*Mr. A. C. Mukerjee, for the 2nd accused, Sudhir Chandra Kundu.*

*Mr. Nishith Chandra Sen, for the 3rd accused, Pramatha Nath Kundu.*

BUCKLAND J. Girish Chandra Kundu, Sudhir Chandra Kundu and Pramatha Nath Kundu have been committed to this Court for trial upon charges under section 103 of the Presidency-towns Insolvency

\* Original Criminal.

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| (1) (1897) I. L. R. 24 Calc. 429. | (4) (1908) I. L. R. 36 Calc. 48.  |
| (2) [1906] All. W. N. 28.         | (5) (1912) Original Criminal, 1st |
| (3) (1919) I. L. R. 41 All. 454.  | Sessions, decided on the 21st     |
|                                   | of February.                      |

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Act. A doubt as to the legality of the commitment having arisen in my mind, I have given the learned counsel for the Crown and the prisoners an opportunity of arguing the point. Though nothing has been urged on behalf of the prisoners, it is desirable that I should state my reasons for the order which I propose to make.

Before a recent amendment, the procedure prescribed by section 104 of the Insolvency Act was that the Insolvency Court should cause notice to be served upon the insolvent, and if it framed a charge against him, it should follow the procedure for the trial of warrant cases by Magistrates prescribed by Chapter XXI of the Code of Criminal Procedure. The Chapter of the Code relating to trials before High Courts and Courts of Sessions was not applicable to such trials. In the year 1926, section 104 was altered and it was provided that where the Insolvency Court is satisfied that there is ground for inquiring into any offence referred to in section 103 and appearing to have been committed by the insolvent, the court may record a finding to that effect and make a complaint of the offence in writing to a Presidency Magistrate and such Magistrate shall deal with such complaint in the manner laid down by the Code of Criminal Procedure, 1898. That new section may at first sight appear to empower the Magistrate to commit the person charged with an offence under section 103 of the Act to this Court for trial, but, as I shall show, that is not a correct view of its effect. The objects of the amendment would appear to be, *firstly*, to avoid the necessity of trials upon charges under section 103 being held by the Judge by whom jurisdiction under the Presidency-towns Insolvency Act is exercised and, *secondly*, in order to bring the procedure into conformity with that prescribed by section 476 of the Code of Criminal Procedure.

Section 103 provides that, on conviction, the insolvent may be punished with imprisonment for a term which may extend to two years. There is no provision

for the imposition of a fine in addition to imprisonment. A case under section 103 is a warrant case, which is defined in section 4 (1) (w) of the Code as a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding 6 months. Section 254 of the Code of Criminal Procedure provides that if the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XXI, the chapter prescribing the procedure in warrant cases, which he is competent to try and which in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused. There is no question as to the Magistrate's competency to try this case, nor can any question arise as to whether he can adequately punish the prisoners for the offences with which they are charged, for the reason that he may impose a sentence of imprisonment as long as any which this Court could impose. It was, therefore, the duty of the Magistrate under that section to frame a charge in writing against the accused and he had no power to commit them to this Court for trial.

Support for this view is to be found in *Queen Empress v. Kayemulla Mandal* (1). That was a case under section 147 of the Indian Penal Code, which had been committed for trial to the Court of Sessions. The learned Judges, in the course of their judgment, pointed out that, as under section 207 of the Code of Criminal Procedure, a Magistrate who is competent to commit a case to the Court of Sessions, can commit to that court both cases triable exclusively by that court and cases which in his opinion ought to be tried by that Court, the commitment of a case under section 147 to the Court of Sessions was not necessarily illegal. The same observations apply to this case with reference to section 207. The learned Judges, however, went on to say that there are sections which limit a Magistrate's power of commitment and that, in a warrant case, he is bound by the provisions of section 254, which they quote and lay emphasis on the

(1) (1897) I. L. R. 24 Calc. 429.

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word "shall." They then pointed out, that an offence under section 147 of the Penal Code is also punishable with a fine of unlimited amount while the Magistrate could impose a fine of Rs. 1,000 only. The Magistrate might, therefore, have committed the case to the Court of Sessions, if he had considered that the fine which he had the power to impose would not be an adequate punishment for the offence. That is the only distinction which can be made between that case and this case. The conclusion at which the learned Judges arrived was that as the Magistrate did not say that he considered the case to be one in which he was not competent to inflict an adequate punishment, he could not under section 254 of the Code of Criminal Procedure commit the case to the Court of Sessions. In this case, no similar considerations arise as the utmost sentence which the law allows any court to impose is one within the competency of the Magistrate and this case, therefore, is even a stronger case than that cited. The commitment, in my judgment, was clearly illegal.

The same view was taken in *Emperor v. Dharam Singh* (1), where Knox J. held that the commitment of the prisoner was wrong, among other reasons, because the maximum penalty under each offence charged was one which the Magistrate could inflict. My attention has also been drawn to *Emperor v. Bindeshri Goshain* (2) which is a further authority for the same proposition.

The question of jurisdiction to make an order under section 215 has been touched upon by the learned counsel for the Crown. I do not think that this presents any difficulty. Whatever may be the effect of the definition of "High Court" in section 4 (1) (j), another and a wider definition, comprising the High Court in every jurisdiction, is substituted in Chapters XVIII and XXIII of the Code of Criminal Procedure (excluding sections 276 and 307) by section 266. As this definition, therefore, applies to "High Court" in section 215, there can be no doubt about the matter.

(1) [1906] All. W. N. 28.

(2) (1919) I. L. R. 41 All. 454.

The Clerk of the Crown has drawn my attention to the unreported case of *Emperor v. Mahadeo Bhujia* (1) in which a Judge of this Court, when exercising Original Criminal Jurisdiction, quashed a commitment and the jurisdiction seems to have been taken for granted in *Phanindra Nath Mitra v. Emperor* (2).

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The order will be that the commitment be quashed. The record with a copy of this judgment will be returned to the Chief Presidency Magistrate, in order that he may deal with the complaint according to law. The Clerk of the Crown will communicate this order to the Chief Presidency Magistrate by letter in the course of to-day, so that, if he thinks fit, he may grant bail in anticipation of the record reaching him. The prisoners, meanwhile, will remain in custody and I direct that they be placed before the Chief Presidency Magistrate.

*Commitment quashed. Case sent back.*

Attorney for Girish Chandra Kundu : *Raikumar Bose.*

Attorney for Sudhir Chandra Kundu : *B. N. Bose & Co.*

Attorney for Pramatha Nath Kundu : *S. K. Basu.*

A.C.R.C.

(1) (1912) Original Criminal, 1st Sessions, decided 21st Feb. (2) (1908) I. L. R. 36 Calc. 48.