

## APPELLATE CRIMINAL.

*Before O. C. Ghose and Panckridge JJ.*

1932  
May 3.

### THE SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL,

*v.*

RAISALEE.\*

*Jurisdiction—Offence on high seas, when triable by the Presidency Magistrate—  
Merchant Shipping Act (57 & 58 Vict., c. 60), ss. 684, 686.*

When some sailors committed an offence, on board of a British ship on high seas, which subsequently arrived in Calcutta, the Chief Presidency Magistrate had jurisdiction, under sections 684 and 686 of the Merchant Shipping Act, to entertain a complaint against them, in the absence of evidence to show that they were not in Calcutta at the time.

In any case, when the accused surrendered before the court, it had jurisdiction to proceed with the trial.

*Emperor v. Salimullah* (1) referred to.

#### CRIMINAL APPEAL.

The material facts appear from the judgment of the Court.

*The Deputy Legal Remembrancer, Khundkar, Anilchandra Ray Chaudhuri and Nirmalchandra Chakrabarti* for the appellant.

*Lalitmohan Sanyal* for the respondent.

GHOSE J. This is an appeal by the Local Government against an order made by the 3rd Presidency Magistrate, Mr. Wajed Ali, acquitting the accused Samiulla and five others in respect of an offence alleged to have been committed by them on the high seas, before the steamship, in which they were employed as members of the crew, had

\*Government Appeal, No. 2 of 1930, against the order of Wajed Ali, Third Presidency Magistrate of Calcutta, dated Dec. 12, 1929.

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arrived in Calcutta. The steamship "City of Hertford" arrived in Calcutta on the 14th September, 1929, and the accused were then on board. On the 17th September, the commander laid a complaint before the Chief Presidency Magistrate against the accused charging them with having been guilty of rioting and causing grievous hurt to two engineer officers. Processes were issued and warrants ordered to be served. The warrants were not executed, as the accused, it is said, were not to be found at the Kidderpore address which they had themselves supplied to the shipping office. Thereafter, proclamations were issued against the accused. But the S.S. "City of Hertford" left port towards the end of September, 1929, after the evidence of Captain Baker and the two engineers were recorded under section 512 of the Code of Criminal Procedure. It is said that all the accused subsequently surrendered before the Chief Presidency Magistrate, who transferred the case to Mr. Wajed Ali for disposal. The 3rd Presidency Magistrate, as stated above, acquitted all the accused, on the ground that the Chief Presidency Magistrate had no jurisdiction to take cognizance of the case on the 17th September, 1929, inasmuch as there was no evidence to show that the accused were in Calcutta on the said day. It is against that order of acquittal that the present appeal has been preferred.

After the admission of this appeal, only one of the six accused, namely, Samiulla, has been arrested and he is presented before us to-day by Mr. Lalitmohan Sanyal. Mr. Sanyal's contention is that there was no evidence that, on the date the processes were issued, the accused was in Calcutta and, therefore, the court had no jurisdiction whatsoever to entertain any complaint against the accused. A clear and sufficient answer to this contention will be found in sections 684 and 686 of the Merchant Shipping Act, 57 & 58 Vict.

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c. 60 and reference may also be made in this connection to the case of *Emperor v. Salimullah* (1), which is on all fours with the present one. It does not appear from the record that, on the date the processes were issued by the Chief Presidency Magistrate, the accused were not in Calcutta. They might not have been found by the process-server, but it does not follow that they were not in Calcutta, and, having regard to the wide terms of sections 684 and 686 of the Merchant Shipping Act, I am not prepared to say that the Chief Presidency Magistrate had no jurisdiction whatsoever in issuing the processes on the date the same were issued. Be that as it may, all the accused obeyed the processes of the court and surrendered before the Chief Presidency Magistrate and subsequently also before the 3rd Presidency Magistrate. That being so, the court of the 3rd Presidency Magistrate had abundant jurisdiction to proceed with the trial of the accused. That not having been done, and the acquittal being one which was wrong in law, it must be set aside and, so far as the accused Samiulla is concerned, he being the only one who has been arrested in pursuance of the orders of this court, there must follow an order of retrial.

The result, therefore, is that the accused Samiulla will be retried in accordance with law on charges under sections 148 and 324 of the Indian Penal Code. The other accused have not been arrested and so far as they are concerned the present appeal will remain pending.

PANCKRIDGE J. I agree.

*Appeal allowed, retrial ordered.*

A. C. R. C.