

CRIMINAL REVISION.

Before Patterson and Guha JJ.

1934

March 14.

D'IMBRAIN

v.

SOMESHWAR CHAUDHURI.*

Commission—Examination of witnesses—Cross-interrogatories, if can be filed subsequent to the framing of charge—Code of Criminal Procedure (Act V of 1898), s. 256 ; Ch. XL.

The provisions in chapter XL of the Code of Criminal Procedure for the examination of witnesses on commission are controlled by section 256. An accused may refrain from putting in any cross-interrogatories when the commission is first issued and may apply, at a later stage, when the charge is framed, for re-issue of the commission together with his cross-interrogatories.

CRIMINAL REVISION :

The material facts and arguments appear from the judgment.

Sureshchandra Talukdar and *Holiram Dea* for the petitioners.

Prabodhchandra Chatterji for the opposite party.

PATTERSON AND GUHA JJ. In the case to which this Rule relates, a certain witness for the prosecution was examined on commission at the instance of the complainant, but for reasons which it is not necessary to state here, no cross-interrogatories were filed on behalf of the accused, and the commission, together with the deposition of the witness, was returned to the trying magistrate without there having been any cross-examination. The trial was then proceeded with,

*Criminal Revision, No. 1216 of 1933, against the order of B. M. Mitra, Sessions Judge of Assam Valley Districts, dated Nov. 28, 1933.

and a charge under section 420 of the Indian Penal Code was in due course framed against the accused persons, the present petitioners. The petitioners thereafter applied to the trying magistrate for the issue of a fresh commission for the cross-examination of the witness in question. The trying magistrate made a recommendation to the District Magistrate for the issue of the commission prayed for, but the District Magistrate refused to issue a fresh commission, on the ground that the petitioners had failed to furnish cross-interrogatories in connection with the first commission, though they had been given several opportunities of doing so. The present Rule is for the quashing or transfer of the proceedings, or, in the alternative, for directing that the petitioners be given an opportunity of cross-examining the witness in question on commission.

The provisions regarding the issue of a commission for the examination of a witness are contained in Chapter XL of the Code of Criminal Procedure, and it is contended on behalf of the opposite party that those provisions are self-contained. It is pointed out that Chapter XL contains no provision for the issue of a supplementary commission for the purposes of cross-examination or for any other purpose, and it is contended that, this being so, the District Magistrate had no power to issue any such supplementary commission as was demanded on behalf of the petitioners. In our opinion, this contention cannot be sustained. Section 256 of the Criminal Procedure Code gives an accused person the right to have the witnesses for the prosecution cross-examined *after charge has been framed*,—and that right is not, in our opinion, in any way affected by the provisions contained in Chapter XL. Section 507, which is one of the sections contained in Chapter XL, provides for the inspection of depositions taken on commission, and it is, in our opinion, open to a person accused in a warrant case

1934

D'Imbrain
v.
Someshwar
Chaudhuri.

1934

D'Imbr. in
v.
Someshwar
Chaudhuri.

to refrain from putting in any cross-interrogatories when the commission is first issued, and to apply at a later stage, (that is to say, after he has inspected the deposition taken on commission and after charge has been framed against him), for re-issue of the commission together with his cross-interrogatories.

In the above view of the matter, we would make the Rule absolute so far as the prayer for a direction on the District Magistrate to give the petitioners an opportunity of cross-examining the witness in question on commission is concerned.

This being our decision on the main question, we do not think it necessary to say anything about the prayer for the quashing of the proceedings or for the transfer of the case to some other district.

Rule absolute.

A. C. R. C.