

## CRIMINAL REVISION.

*Before Mukerji and S. K. Ghose JJ.*

KANHAIYALAL BENGANI

v.

KANMAL LODHA.\*

1934

Jan. 25, 26.

*Presidency Magistrate—Presidency Magistrates, if subordinate to the Additional Chief Presidency Magistrate—Code of Criminal Procedure (Act V of 1898), s. 202.*

All Presidency Magistrates are subordinate to the Chief Presidency Magistrate as well as to the Additional Chief Presidency Magistrate, who exercises all the powers of the Chief Presidency Magistrate.

The Additional Chief Presidency Magistrate may send a case to another Presidency Magistrate under section 202 of the Code of Criminal Procedure for enquiry and report.

### CRIMINAL REVISION.

The material facts of the case and the arguments in the Rule appear from the judgment.

*Narendrakumar Basu, B. C. Ghose and Praphulla-chandra Chakrabarti* for the petitioners.

*Debendranarayan Bhattacharjya and Nogendrakumar Datta* for the opposite party.

*Cur. adv. vult.*

MUKERJI AND S. K. GHOSE JJ. This is a Rule to show cause why the proceedings pending in the court of Mr. H. K. De, Fourth Presidency Magistrate, in respect of a case under section 380 of the Indian Penal Code should not be quashed or at any rate stayed till the disposal of a suit, No. 1125 of 1933, pending between the parties on the Original Side of this Court.

\*Criminal Revision, No. 1178 of 1933, against the order of H. K. De, Fourth Presidency Magistrate of Calcutta, dated Nov. 14, 1933.

1934

*Kanhaiyalal  
Bengani  
v.  
Kanmal  
Lodha.*

On the 13th May last, the complainant laid an information of theft of two boxes of jewellery. On that, the two petitioners were arrested and, an investigation being held by the police, the petitioners were discharged, the Deputy Commissioner of Police observing that the case was doubtful and probably false. On the 2nd June last, the complainant lodged a complaint, on which the Additional Chief Presidency Magistrate made an order under section 202 of the Code of Criminal Procedure, sending the complaint to Mr. H. K. De for judicial enquiry and report. Mr. De, thereupon, examined some witnesses and issued summonses against the petitioners under section 380 of the Indian Penal Code.

On the 27th May last, the firm of Indarchand Lachhmipat, of which the first petitioner alleges he is a partner, instituted a suit against the complainant and his wife as defendants, wherein a pledge by the latter in respect of the said jewellery has been set up.

The Rule, in so far as it relates to the quashing of the proceedings, is based upon the contention that Mr. De had no authority to issue the summonses, inasmuch as the case had been sent to him merely for enquiry and report. The learned magistrate, in his explanation, has observed that the mistake on his part in issuing summonses was due to an oversight. On behalf of the complainant, however, it has been contended before us that the Fourth Presidency Magistrate is not subordinate to the Additional Chief Presidency Magistrate, and that, therefore, the latter had no jurisdiction to make an order sending the complaint to the former for enquiry and report in the terms of section 202 of the Code. The argument further is that, when the complaint came before Mr. De, he could issue process on it, holding the enquiry as he has done. We are of opinion that the complainant's contention is not sound.

1934

*Kanhaiyalal  
Bengani  
v.  
Kannal  
Lodha.*

It is not disputed that all stipendiary as well as non-stipendiary Presidency Magistrates have been declared by the Local Government subordinate to the Chief Presidency Magistrate (*vide* Notification No. 3540J.D., published in the *Calcutta Gazette*, 1903, Part I, dated October 7th, 1903, page 1321). By section 18(4) of the Code, an Additional Chief Presidency Magistrate has been vested with all the powers of the Chief Presidency Magistrate. A power to send the case to a subordinate magistrate under section 202 of the Code is one of those powers. A subordination by implication has been created by the said provision, for, unless such subordination is assumed, the exercise of the power would be impossible. We are of opinion, therefore, that the order, which the Additional Chief Presidency Magistrate made, was one which is authorized by law and which Mr. De had to comply with. In this view of the matter, the summonses issued on the accused should be quashed and we order accordingly. All that would be necessary for Mr. De is to send a report to the Additional Chief Presidency Magistrate and it will be for the latter to deal with the complaint in accordance with law.

As the question of stay has also been argued before us, we desire to state that, upon the circumstances of the case, we consider it one, in which, if process is issued, no trial should be held until the suit referred to in the Rule has been disposed of.

The Rule is made absolute.

*Rule absolute.*

A. C. R. C.