

ORIGINAL CRIMINAL.

Before Jack J.

1932
Feb. 22.

SUKUMAR MAJUMDAR

v.

EMPEROR.*

Appeal—Appeal under the Bengal Emergency Powers Ordinance (XI of 1931), if lies to the High Court—High Court exercising original criminal jurisdiction, if a Sessions Court—Bengal Emergency Powers Ordinance (XI of 1931), s. 33.

The High Court exercising the Original Criminal Jurisdiction is not a Sessions Court.

An appeal under section 33 of the Bengal Emergency Powers Ordinance (XI of 1931) from a sentence of four years' rigorous imprisonment does not lie to the High Court.

Emperor v. Harendra Chandra Chakravarty (1) relied on.

CRIMINAL APPEAL under the Bengal Emergency Powers Ordinance of 1931.

The appellant and another Mukulchandra Ray were tried on charges under sections 19 (F) and 20 of Indian Arms Act for the possession of a five-chambered revolver and 8 live cartridges without a licence. On receipt of certain information, the Port Police, Special Staff, Calcutta, kept watch and ultimately arrested the appellant and the co-accused at the junction of Chhaku Khânsamâ Lane and Upper Circular Road with the aforesaid arms. The trial was held under the Bengal Emergency Powers Ordinance No. XI of 1931. The learned Chief Presidency Magistrate convicted both the accused on both charges and sentenced the appellant, Sukumar Majumdar, to four years' rigorous imprisonment and the co-accused Mukulchandra Ray to five years'

*Original Criminal.

rigorous imprisonment. Sukumar Majumdar preferred this present appeal before the Judge exercising original criminal jurisdiction.

J. M. Banerjee for the appellant.

The Standing Counsel, *A. K. Roy*, for the Crown.

JACK J. This is an appeal under section 33 of the Bengal Emergency Powers Ordinance XI of 1931. It appears in this case, sentence of four years' imprisonment was passed by the Special Magistrate, in which case an appeal lies to the Special Tribunal constituted for the area in which the offence was tried. Under the proviso to clause (1) of section 33,* where no Special Tribunal has been so constituted, an appeal shall lie to the Court of Sessions. An appeal has, therefore, been made in the present case to this Court. In the case of *Emperor v. Harendra Chandra Chakravarty* (1), it was held that the High Court exercising Original Criminal Jurisdiction is not a Sessions Court within the meaning of the Criminal Procedure Code. In the circumstances, this appeal must be rejected for want of jurisdiction, leaving it to the appellant to take such steps as he may be advised to take in the matter, as it appears that it was intended that there should be an appeal. Had the sentence been over four years, the appeal would have been to this Court, but, in the circumstances, no appeal lies to this Court, and the appeal must, therefore, be dismissed.

Appeal dismissed.

A. C. R. C.

*Where a Special Magistrate passes a sentence of transportation or imprisonment for a term exceeding two years, or of fine exceeding one thousand rupees, an appeal shall lie to the Special Tribunal constituted for the area in which the offence was tried:

Provided that where no Special Tribunal has been so constituted, the appeal shall lie to the Court of Sessions, unless the Special Magistrate passes a sentence of transportation exceeding two years or a sentence of imprisonment exceeding four years, in which case the appeal shall lie to the High Court.