

## CRIMINAL REVISION.

Before *Nasim Ali J.*

SHABHAPATI DOBEY

v.

RAMKISHAN KUMAR.\*

1935

Jan. 29.

*Court of Appeal—Additional Sessions Judge—Revision, Court of—What courts are such—Code of Criminal Procedure (Act V of 1898), ss. 9, 435, 436, 438, 517, 518, 520; Ch. XXII; Ch. XXXII.*

An Additional Sessions Judge is a court of appeal but not a court of revision within the meaning of section 520 of the Code of Criminal Procedure.

The court of appeal, mentioned in section 520 of the Code of Criminal Procedure, must be a court of appeal as contemplated by Chapter XXXI of the Code.

There is nothing in the terms of section 520 justifying the view that the words "court of appeal" in that section mean only a court to which either of the parties to the criminal case has appealed or could appeal.

*Empress v. Joggesur Mochi* (1) and *U Po Hla v. Ko Po Shein* (2) referred to.

The wording of the section rather indicates that the court of appeal is any court, which has powers of appeal, i.e., any court, to which appeals would ordinarily lie from the decision of the magistrate by whom the case was tried.

*Queen Empress v. Ahmed* (3) and *Walchand Jasraj Marwari v. Hari Anant Joshi* (4) referred to.

The court of revision within the meaning of section 520 must be a court of revision as contemplated by Chapter XXXII of the Code.

The Sessions Judge or the Additional Sessions Judge is not a court of revision within the meaning of section 520 of the Code.

*Chunbidiya v. King-Emperor* (5) relied on.

*Walchand Jasraj Marwari v. Hari Anant Joshi* (4) dissented from.

CRIMINAL RULE, obtained by the accused.

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

*Holiram Deka* for the petitioner.

*Gopalchandra Banerji* for the opposite party.

\*Criminal Revision, No. 1282 of 1934, against the order of J. N. Barooah, First Additional Judge of Assam Valley Districts, dated Oct. 10, 1934, setting aside the order of N. Das, Magistrate, First Class, of Golaghat, dated May 4, 1934.

(1) (1878) I. L. R. 3 Calc. 379.

(3) (1886) I. L. R. 9 Mad. 448.

(2) (1929) I. L. R. 7 Ran. 345.

(4) (1932) I. L. R. 56 Bom. 369.

(5) (1934) I.L.R. 57 All. 156; L. R. 62 I. A. 36.

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NASIM ALI J. This Rule was issued against the Deputy Commissioner of Sibsagar and the complainant opposite party in a certain criminal case to show cause why the order of the Additional Sessions Judge of the Assam Valley Districts in criminal appeal No. 12 of 1934, dated the 10th October, 1934, setting aside, under section 520 of the Code of Criminal Procedure, an order of a first class magistrate of Golaghat, under section 517 of the Code, and restoring a certain elephant to the complainant opposite party should not be set aside on the ground that the Additional Sessions Judge was not the court of appeal, confirmation, reference or revision within the meaning of section 520, Criminal Procedure Code. Section 520 is in these terms :—

Any court of appeal, confirmation, reference or revision may direct any order under section 517, section 518 or section 519, passed by a court subordinate thereto, to be stayed pending consideration by the former court, and may modify, alter or annul such order and make any further orders that may be just.

Evidently, the court of appeal mentioned in the section must be a court of appeal as contemplated by chapter XXXI. There is nothing in the terms of section 520 justifying the view that the words "court of appeal" in that section mean only a court to which either of the parties to the criminal case has appealed or could appeal. See *Empress v. Joggesur Mochi* (1), *U Po Hla v. Ko Po Shein* (2). The wording of the section rather indicates that the court of appeal is any court, which has powers of appeal, *i.e.*, any court, to which appeals would ordinarily lie from the decision of the magistrate by whom the case was tried. See *Queen Empress v. Ahmed* (3) and *Walchand Jasraj Marwari v. Hari Anant Joshi* (4). It is not disputed by the learned advocate for the petitioner that the Court of Session is the court of appeal in the present case. Under section 9 of the Criminal Procedure Code, the Local Government is empowered to establish a Court of Session for every session division and to

(1) (1878) I. L. R. 3 Cal. 379.

(2) (1929) I. L. R. 7 Ran. 345.

(3) (1886) I. L. R. 9 Mad. 448.

(4) (1932) I. L. R. 56 Bom. 369.

appoint a judge of such a court and Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in such court and to direct at what place or places the Court of Session shall sit. Now—

There is only one Court of Session in each sessional division, sitting at different places and manned by a number of judges. The court is the Court of Sessions. It is not accurate to refer to the "Court of the Sessions Judge" and the "Court of the Additional Sessions Judge" and so on except colloquially.

See *Superintendent and Remembrancer of Legal Affairs, Bengal v. Ijyatulla Paikar* (1).

Therefore, an Additional Sessions Judge is also a judge of the Court of Session. Consequently, the Additional Sessions Judge of the Assam Valley Districts sitting at the time at Jorhat was the court of appeal in the present case within the meaning of section 520 of the Criminal Procedure Code. It may be pointed out here that, when the petitioner appeared before the Additional Sessions Judge after he got notice about this case, he did not raise the question that the Additional Sessions Judge had no jurisdiction to entertain the appeal or that he was not authorised by the Sessions Judge to hear the appeal. Again the court of revision within the meaning of section 520 must be a court of revision as contemplated by chapter XXXII of the Code. Under section 435 of Criminal Procedure Code the Sessions Judge can call for the record in the case. Under section 436 he can order further enquiry. Under section 438 he can refer the matter to the High Court after examination of the record. In the case of *Walchand Jasraj Marwari v. Hari Anant Joshi* (2), Beaumont C. J. observed as follows :—

The Sessions Court has no general power of making orders in revision; it can only, under section 435, inquire into the matters before subordinate courts and if necessary refer to the High Court for orders under section 438. But section 520 seems to make it unnecessary for a subordinate court of revision to adopt that course in matters within that section. If an application is made to the Sessions Court as the court having powers of revision in respect of the trial court in regard to orders relating to property made under sections 517, 518 or 519, then in my opinion the Sessions Court can itself make a proper order and need not refer the matter to the High Court.

(1) (1930) I. L. R. 58 Calc. 1117, 1121, (2) (1932) I. L. R. 56 Bom. 369,

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*Nasim Ali J.*

In the case of *Chunbidya v. King Emperor* (1), decided by their Lordships of the Judicial Committee on 6th December, 1934, Lord Atkin has made the following observation:—

The powers relating to appeals under section 423 of Criminal Procedure Code are given to the appellate court and the appellate court may include a court subordinate to the High Court and the appellate court as such has no power to enhance the sentence, differing from the provision, which was in the old Criminal Procedure Code of 1872. On the other hand, the powers of revision are given to the High Court *alone* and the powers of revision are given to the High Court in the case of any proceeding, the record of which has been called for by itself or which has been reported for orders or which otherwise comes to his knowledge.

In view of the observations of the Judicial Committee, it is difficult to hold that Sessions Judge or Additional Judge is a court of revision within the meaning of section 520.

But, as I have held that the Additional Sessions Judge is a court of appeal within the meaning of section 520 of the Code, I discharge the Rule.

*Rule discharged.*

G. S.

(1) (1934) I.L.R. 57 All. 156 ; L. R. 62 I. A. 36.