

## CRIMINAL REVISION.

Before Lord-Williams and Jack J.J.

JADABENDRA NATH PANJA

0.

EMPEROR\*.

1936

Jan. 14. .

*Special Magistrate—Fine imposed by Ordinance XI of 1931, if can be realised after its expiry—Ordinance IX of 1932, s. 4—Code of Criminal Procedure (Act V of 1898), s. 386.*

A Special Magistrate appointed under the Bengal Suppression of Terrorist Outrages Act (Beng. XII of 1932) is not the successor-in-office of a Special Magistrate appointed under Ordinance XI of 1932, for the purpose of issuing a warrant for the realisation of fines under s. 386 of the Code of Criminal Procedure.

*Per* LORT-WILLIAMS J. The proviso to s. 386 of the Code of Criminal Procedure is intended to deal with cases where for some sufficient reason the authorities have not been able to realise the fine before the default sentence has been served. That the accused is a man of dangerous character is not a sufficient reason within the meaning of the proviso.

*Digambar Kashinath v. Emperor* (1) relied on.

## CRIMINAL REVISION.

The material facts and arguments appear sufficiently from the judgment.

*Santosh Kumar Basu* and *Deba Brata Mukherji* for the petitioner.

*Debendra Narayan Bhattacharjya* for the Crown.

LORT-WILLIAMS J. In this case, a Rule was issued to show cause why an order issuing a warrant under s. 386 of the Code of Criminal Procedure to the Collector of Burdwan, authorising him to realise the unrealised part of a fine imposed on the petitioner in

\*Criminal Revision, No. 1269 of 1935, against the order of M. H. B. Lethbridge, Sessions Judge of Burdwan, dated Nov. 9, 1935, affirming the order of B. Singha, Subdivisional Officer of Burdwan, dated Feb. 2, 1935.

1936

*Jadabendra  
Nath Panja*

v.

*Emperor.**Lord-Williams J.*

1932 by a Special Magistrate under s. 17 (2) of the Criminal Law Amendment Act, should not be set aside.

The petitioner was convicted on January 27, 1932, under s. 17 (2) of the Indian Criminal Law Amendment Act of 1908 for having promoted a meeting under the auspices of the Burdwan Congress Committee which had been declared unlawful.

The case was tried by Mr. S. P. Ghosh, Special Magistrate, Burdwan, who sentenced the petitioner to undergo rigorous imprisonment for two years and six months and to pay a fine of Rs. 500, in default, to suffer rigorous imprisonment for six months more.

On March 8, 1932, an order was made for the execution of the fine and, subsequently, while the petitioner was serving his sentence, a sum of Rs. 44-8-0 was realised by attachment and sale of his movable properties. In May, 1932, Ordinance No. XI of 1931, under which Mr. S. P. Ghosh had been appointed a Special Magistrate, expired. The petitioner alleges that, although part of the fine was realised, no intimation of such realisation was given to the jail authorities, with the result that the petitioner had to serve out the whole term of imprisonment inflicted in default of payment of the fine, namely, six months, in addition to the substantive sentence of imprisonment passed upon him. Further, he alleges that the fact of realisation of a part of the fine, if intimated to the jail authorities, would have earned for him a remission of sentence, but that he received no such remission on account of partial realization of the fine beside the usual remission for good conduct under the Jail Code. Subsequently, on March 7, 1935, a warrant was issued under s. 386 of the Code of Criminal Procedure by Mr. B. Singha, Sub-Divisional Magistrate of Burdwan, authorising the Collector of the district to realise the unrealised part of the fine, *viz.*, Rs. 456 according to civil process by attachment and sale of the immovable properties of the petitioner. The

petitioner further alleges that, although it appeared clear from the settlement papers, *etc.*, that he had some landed properties, no proper steps were taken to realise the unrealised portion of the fine till after the lapse of three years from the date of his conviction.

1936  
 ———  
*Jadabendra*  
*Nath Panja*  
 v.  
*Emperor.*  
 ———  
*Lord-Williams J.*

The arguments raised on behalf of the petitioner are that the Court of Mr. B. Singha, who issued the warrant, not being a Court of the Special Magistrate who passed the sentence or his successor-in-office, had no power to issue the warrant. Further, the warrant was not signed by Mr. Singha as a Special Magistrate but as Sub-Divisional Magistrate of Burdwan. Further, it has been argued that, under s. 386 of the Code of Criminal Procedure, where the offender has suffered the whole of the imprisonment ordered to be undergone in default of payment of the fine, the Court shall not issue a warrant for the realisation of the fine, unless for special reasons to be recorded in writing it considers it necessary to do so.

With regard to the first point, Ordinance XI of 1931 provided in Chap. I for certain emergency powers and in Chap. II for certain special criminal Courts, and s. 23 (included in that Chapter) provided that Courts of criminal jurisdiction may be constituted under that Ordinance of the following classes, namely, (i) Special tribunals and (ii) Special Magistrates. The note in the margin of that section is "Special Courts." Section 386 of the Code of Criminal Procedure provides that whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine by issuing certain warrants; provided that, if the sentence directs that, in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to do so.

1936

*Jadabendra  
Nath Panja*  
v.  
*Emperor.*

*Lord-Williams J.*

Section 389 provides that—

Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor-in-office.

It is contended on behalf of the Crown that Mr. Singha is the successor-in-office of Mr. S. P. Ghosh within the meaning of this section. In my opinion, this contention is not sound. The sentence passed by Mr. Ghosh was passed by him as a Special Magistrate forming a Special Criminal Court within the meaning of s. 23 of Ordinance XI of 1931. That Court came to an end in May, 1932. Mr. Singha, who succeeded Mr. Ghosh as Sub-Divisional Magistrate, cannot possibly be held to be Mr. Ghosh's successor as a Special Magistrate forming a Special Criminal Court within the meaning of that section. Similarly, although Mr. Singha became a Special Magistrate on the very day he made the order in question, he did not make the order as a Special Magistrate, and it is doubtful whether he even knew that special powers had been conferred upon him. Moreover, he was appointed a Special Magistrate under the Bengal Suppression of Terrorist Outrages Act (XII of 1932). Consequently, it is not possible to argue that, on account of this appointment, he became the successor-in-office of Mr. Ghosh, the Special Magistrate, under the previous Ordinance, who convicted the accused and inflicted the sentence upon him.

Ordinance IX of 1932 in s. 4 thereof provides that where before the expiration of the Bengal Emergency Powers Ordinance, 1931, an order has been made thereunder for the trial of any person by a Special Magistrate but the trial has not begun, or the trial has proceeded but has not been completed, the offence may be tried or the trial completed by such Special Magistrate, and such Special Magistrate shall continue to have all the powers with which he was vested under the said Ordinance. If a further provision had been made under that section for the execution by warrant of fines inflicted

as part of the sentence as in the present case, no difficulty would have arisen. It is conceivable that the difficulty might be met by applying the provisions of s. 559 of the Code of Criminal Procedure. That section provides "that the powers and duties of a Judge or Magistrate may be exercised or performed by his successor-in-office." And "when there is any doubt as to who is his successor-in-office, the District Magistrate shall determine, by order in writing, the Magistrate who shall, for the purposes of the Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Magistrate."

1936  
*Jadabendra*  
*Nath Panja*  
 v.  
*Emperor.*  
*Lord-Williams J.*

It is not necessary to give any decision on this point, because that matter is not in issue at the present moment and will have to be decided when, if at all, such an order is made in this or any other "Magistrate."

The other point raised on behalf of the petitioner is that Mr. Singha, who issued the warrant, did not record any special reason in writing within the meaning of the prov. to s. 386. The reason he recorded was that the petitioner was a man of dangerous character. In my opinion, this was not such a reason as is contemplated by the section. In *Digambar Kashinath v. Emperor* (1), Sir John Beaumont C.J. said that the Court should follow the policy which seems to have inspired the prov. to s. 386, which appears to be that in general an offender ought not to be required both to pay the fine and to serve the sentence in default. But the proviso enables a warrant to be issued for recovery of the fine, even if the whole sentence of default has been served, if the Court considers that there are special reasons for issuing the warrant and, in his opinion, those should be reasons accounting for the fact that the fine has not been recovered before the sentence in default has been served. I am in agreement with the

1936

*Jadabendra  
Nath Panja*

v.

*Emperor.**Lord-Williams J.*

remarks of the learned Chief Justice. Except in special cases, it seems to me both undesirable and unfair to seek to realise a fine when the sentence ordered to be served in default of payment of the fine has already been served in full: and, in my opinion, the proviso is intended to deal with cases where for some sufficient reason, the authorities have not been able to realise the fine before the default sentence has been served. It is true that there seems to be some evidence to show that the authorities did try to realise the fine but were not aware that the petitioner possessed landed properties. On the other hand, he alleges that they had the settlement papers which they could have had examined and which would show clearly that he was the owner of the properties, and that their inability to realise the fine was due to their own laches. Whether that be true or not, that is not the reason recorded by the learned Magistrate for issuing a warrant within the meaning of the prov. to s. 386 of the Code of Criminal Procedure.

For all these reasons, I am of opinion that the order of Mr. Singha must be set aside and the warrant quashed.

JACK J. I agree that the order should be set aside as it appears to be a case which is not contemplated by the Code of Criminal Procedure, namely, where there is no successor-in-office to the Special Magistrate. Section 559 applies where there is any doubt as to who is the successor-in-office and possibly it might be held that under that section the District Magistrate would be empowered to appoint a successor-in-office for the purpose of these proceedings. But in this case no such appointment has been made.

As regards the other point, it may be noted that, although in the Bombay case [*Digambar Kashinath v. Emperor* (1)], the learned Chief Justice held that the reason given by the Magistrate was not such a

reason as is referred to in s. 386, he still refused to interfere with the order for the execution of the warrant on the ground that, although the reason given by the Magistrate was not such a reason, still there was a special reason in that case why the warrant should be executed, a reason similar to that which the prosecution alleged in the present case, *i.e.*, that the authorities had endeavoured to realise the fine but had not been able to do so in due time owing to not knowing where the properties were situated.

1936

*Jaiabendra*  
*Nath Panja*  
 v.  
*Emperor.*  
*Jack J.*

*Rule absolute.*

A. C. R. C.