

CRIMINAL REFERENCE.

Before Jack and Khundkar JJ.

EMPEROR

v.

SAYER UDDIN PRAMANIK.*

1938

March 1.

Jurisdiction—Commitment, if invalidated by transfer of place of occurrence from the jurisdiction—Sessions Court, if can proceed with such trial—Code of Criminal Procedure (Act V of 1898), ss. 177, 531.

A commitment properly made is not invalidated by reason of the transfer of the place where the offence was committed to another district subsequent to the taking of cognizance but prior to the commitment.

Under s. 177 of the Code of Criminal Procedure, a Magistrate, within whose local jurisdiction the offence is committed, is authorised to take cognizance and to try the case or to commit it to the Court of Sessions. The subsequent transfer of the locality to another District does not oust the jurisdiction of the Magistrate.

As such Magistrate can commit the case only to the Court of Sessions within whose jurisdiction the locality originally was, such Court can proceed with the trial.

Emperor v. Mahabir (1); *Emperor v. Ram Naresh Singh* (2) and *Emperor v. Ganga* (3) referred to.

In any case an order of commitment is an order contemplated by s. 531 of the Code of Criminal Procedure and is therefore valid under that section, even if the committing Magistrate had no territorial jurisdiction at the time of the commitment.

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The material facts of the case and the argument in the Reference appear sufficiently from the judgments.

Anil Chandra Ray Chaudhuri for the Crown.

JACK J. This is a Reference by the Sessions Judge of Rajshahi under s. 435 of the Code of

*Criminal Reference, No. 29 of 1938, made by K. C. Chunder, Sessions Judge of Rajshahi, dated Feb. 15, 1938.

(1) (1911) I. L. R. 33 All. 578.

(2) (1911) I. L. R. 34 All. 118.

(3) (1912) I. L. R. 34 All. 451.

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Criminal Procedure for quashing a commitment made to his Court by the Magistrate of Natore in the case of *Emperor v. Sayer Uddin Pramanik* under ss. 363 and 376 of the Indian Penal Code. After the jury had been empanelled and the Public Prosecutor had started the case for the prosecution, it was noticed by the Court that the occurrence took place within Nandigram police-station, which had been transferred by the Local Government from the jurisdiction of Natore subdivision of Rajshahi district to the sadar subdivision of Bogra district. The learned Judge is, therefore, of opinion that since the place of occurrence is now within the local jurisdiction of the district of Pabna and Bogra, he has no jurisdiction to try the case. He therefore recommends that the commitment having been by a Magistrate without local jurisdiction to a Sessions Court without local jurisdiction it should be quashed and that the Magistrate should be asked to hold a fresh preliminary enquiry and take such further steps as might be necessary.

In this case, the occurrence took place on October 20, 1937. The First Information was given on the 22nd October; the Magistrate took cognizance on the 22nd November. The transfer of the *thânâ* in which the occurrence took place was notified on the 14th of December. The case was committed to the Sessions Court on the 12th January and trial commenced on the 15th February. Under s. 177 of the Code of Criminal Procedure, every offence shall ordinarily be enquired into and tried by a Court within the local limits of whose jurisdiction it was committed. As this offence was committed within the local jurisdiction of the Magistrate who took cognizance, he was authorized under s. 177 to try the case or to commit it to Sessions. The fact that the locality in which the offence was committed was subsequently transferred to another district did not oust the jurisdiction of the Magistrate. Since he had jurisdiction to take cognizance he had jurisdiction to commit the case to the Sessions Court. If any authority for this is

required, it would be found in the case of *Emperor v. Mahabir* (1). In that case, it was held that the subsequent transfer of territory did not deprive the Court in which the appeal had been filed of its jurisdiction to hear it.

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In the case of *Emperor v. Ram Naresh Singh* (2) it was held that the Sessions Court was not deprived of jurisdiction to dispose of the case which had been committed to it for trial inasmuch as the place at which the offence had been committed had, in the meantime, been transferred to a Native State.

In the case of *Emperor v. Ganga* (3) the offence was committed at a place which was then part of the Mirzapore district. Subsequently one of the persons alleged to have taken part in the commission of such offence was arrested in Bengal, and sent to Mirzapore where he was committed by the Joint Magistrate to take his trial before the Court of Sessions. In the meanwhile the place where the offence was committed had ceased to be British territory. It was held that this fact did not oust the jurisdiction of either the Magistrate or the District Judge of Mirzapore.

The attention of the learned Sessions Judge is drawn to s. 531 of the Code of Criminal Procedure which lays down :—

No finding, sentence, or order of any criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding, in the course of which it was arrived at or passed, took place in a wrong sessions division, district, subdivision, or other local area, unless it appears that such error has, in fact, occasioned a failure of justice.

Therefore, even if the committing Magistrate had no territorial jurisdiction at the time of the commitment and it were considered that he had on that account, no jurisdiction to make the commitment such want of jurisdiction would not be a good ground for setting aside the order of commitment.

This Reference is, accordingly, rejected and the trial will proceed from the stage which it has reached.

(1) (1911) I. L. R. 33 All. 578.

(2) (1911) I. L. R. 34 All. 118.

(3) (1912) I. L. R. 34 All. 451.

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Let the record, if any and this order go down as soon as possible.

KHUNDKAR J. I agree. It seems to me that neither the Sessions Judge nor the Public Prosecutor considered the provisions of s. 531 of the Code of Criminal Procedure. It is perfectly clear that the order of commitment was an order within the meaning of this section and it was certainly made in the course of a proceeding, *i.e.*, the enquiry preliminary to the commitment, which, at the time of the order, was in a wrong subdivision. It has not been even suggested that the order of commitment has occasioned any failure of justice. The commitment was, in fact, made to the only Court to which the Magistrate of Natore had the power to commit. There is, therefore, no substance in this Reference.

Reference rejected.

A. C. R. C.