

## FULL BENCH.

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Jackson, Mr. Justice Pontifex, Mr. Justice Morris, and Mr. Justice Mitter.

1880  
April 26.

THE EMPRESS v. ANUNTRAM SINGH AND OTHERS.\*

Confession—Code of Criminal Procedure (Act X of 1872), ss. 122, 198, 346.

A confession recorded by a Magistrate, who afterwards conducts the enquiry preliminary to committal, and has jurisdiction to do so, is to be treated as an examination under s. 198 of the Criminal Procedure Code and not as a confession recorded under s. 122, notwithstanding that the prisoner may have been brought before the Magistrate before the conclusion of the police investigation. To such a confession consequently the provisions of the last paragraph of s. 346 apply.

Section 122 of the Criminal Procedure Code contemplates and provides for cases in which confessions are recorded by a Magistrate other than the Magistrate by whom the case is enquired into or tried.

*The Empress v. Mannoo Tumboole* (1) distinguished.

THIS was a reference made by Mr. Justice Jackson and Mr. Justice Tottenham to a Full Bench. The order of reference was as follows:—

“One Anuntram, with a woman named Tophia Bewah and others, were charged with a most brutal and atrocious murder, and were tried by the Court of Sessions of Cuttack. Anuntram and Tophia were convicted and sentenced to death, and their case is now before us. A third person, named Dariah Singh, was also convicted and was sentenced to transportation for life, and he has appealed.

“The evidence for the prosecution was scanty, and was not of very good quality; and part of it consisted of two confessions made by the prisoners Tophia and Dariah and recorded by the Joint Magistrate, who afterwards committed all the prisoners for trial. Upon these confessions being tendered in

\* Criminal Reference to a Full Bench, No. 8 of 1880, on Criminal Appeals Nos. 126 and 127 of 1880, against the order of A. W. Cochran, Officiating Sessions Judge of Cuttack, dated the 28th January 1880.

(1) I. L. R., 4 Calc., 696.

evidence at the trial, it was objected on the part of the accused that they were not admissible, inasmuch as the Magistrate had omitted to annex to them the certificate prescribed by s. 346, and also that they had not the signatures or marks of the accused. The form of certificate required by s. 122 had been appended by the Magistrate not to the vernacular record of the prisoner's statement, but to the note of it, which he took simultaneously in English. It was also contended that the prosecution was not at liberty, under s. 346, to take evidence to prove that the prisoners had duly made the statement recorded, because it was said that this examination being taken under s. 122 had not been taken in a preliminary enquiry. It was urged that the Joint Magistrate had not, up to that time, got the case properly before him upon his own file, and that he himself had given the strongest possible proof of the nature of his proceeding by noting the confessions in the case of both prisoners as having been taken under s. 122. The Sessions Judge, however, for the reasons stated in his judgment, came to the conclusion that, notwithstanding the use of the words 's. 122' by the Joint Magistrate, they were really examinations recorded under s. 346, and therefore he allowed evidence to be given showing that the prisoners had duly made the statements. The Sessions Judge arrives at the conclusion not without some hesitation, and he refers to the cases of *Reg. v. Rai Ratan* (1) and *The Empress v. Mannoo Tamoolee* (2). Since then there has been another decision by Wilson and Tottenham, JJ.—*In the matter of Behari Hajdi* (3)—in which the same point has been considered.

"In regard to the case of *The Empress v. Mannoo Tamoolee* (2) we entirely concur in the ruling of the learned Judges. There the confession was recorded under s. 122 before a Magistrate, who, at the time when he recorded it, had no jurisdiction over the case. In the present instance the facts were different, inasmuch as the Magistrate who recorded the confessions had jurisdiction and did himself conduct the enquiry from first to last, and eventually committed the accused to the Sessions. The

(1) 10 Bom. H. C. Rep., 126.

(2) I. L. R., 4 Calc., 696.

(3) 5 C. L. R., 239.

1880  
 EMPRESS  
 v.  
 ANUNTHAK  
 SINGH.

questions which appear to us material, and which are of very great importance, are: *firstly*,—Is not a confession recorded by a Magistrate having jurisdiction, to be treated as an examination under s. 193, notwithstanding that the prisoner or prisoners may have been brought before the Magistrate before the conclusion of the police investigation? and *secondly*,—Is the examination to be excluded by reason of the absence of a certificate, that it contains accurately the whole of the statement made by the accused person, although the certificate required by s. 122 is forthcoming, and although the prisoner himself admits that the examination does contain the whole of his statement? We think these questions to be of such difficulty and importance that they ought to be decided by a Full Bench of this Court, and we refer the case accordingly.

“We observe that the subject has also been considered in a still more recent case (1) by Morris and Prinsep, JJ., whose judgment commends itself to our approval.”

No one appeared to argue the points referred.

The opinion of the Full Bench was as follows:—

In the particular case out of which this reference arises, the prisoners, Tophia and Dariah, were arrested by the police and forwarded under custody to the Magistrate having jurisdiction, and made each a confession to him before the police investigation was concluded, (or at least before the report of the police investigation was submitted). The Magistrate who recorded their confessions was the Magistrate who conducted the preliminary enquiry, and committed them for trial to the Court of Session. And not only had this officer jurisdiction to make the enquiry preliminary to commitment, but he had also the power to determine what Magistrate should conduct the enquiry. The Sessions Judge finds that, “when the prisoners were sent up before him on the 17th, he had resolved to take up the preliminary enquiry himself,” as indeed his duty required; but that the formal order to that effect was not made till a few days later. The prisoners, as the Judge also points out, ceased to be in the hands of the police from the time that they were brought before the Magistrate. Their confessions were

(1) *Krishno Monee v. The Empress*, 6 C. L. R., 289.

recorded, and they were ordered to be placed in hajut, and there-  
after the preliminary enquiry, as it affected them, was carried  
on, and the police investigation was at an end.<sup>c</sup>

1880  
EMRESS  
v.  
ANUNTRAM  
SINGH.

Under these circumstances, we are of opinion that the con-  
fessions of these two prisoners must be regarded as having  
been made in the course of a preliminary enquiry, and not  
under s. 122, Code of Criminal Procedure; and that, con-  
sequently, the provisions of the last paragraph of s. 346 apply.

Section 122 contemplates and provides for cases in which  
confessions are recorded by a Magistrate other than the Magis-  
trate by whom the case is enquired into or tried. When, there-  
fore, as here, the Magistrate who recorded their confessions was  
the Magistrate who conducted the enquiry preliminary to com-  
mittal, and had jurisdiction so to do, such confessions cannot  
be treated as taken under s. 122; nor can the circumstance of  
the Magistrate having noted at the head of the confessions that  
they were recorded under s. 122 affect the matter. The case of  
*The Empress v. Mannoo Tamoollee* (1) does not conflict with this  
view; for though the Magistrate who recorded the confession  
in that case subsequently conducted the preliminary enquiry  
and committed the prisoner for trial, yet, at the time of recording  
his confession, he was outside the limits of his jurisdiction, and  
had no power to take up the preliminary enquiry.

It seems to us, therefore, that the first question of reference,  
*viz.*, whether a confession recorded by a Magistrate having juris-  
diction is to be treated as an examination under s. 193,  
notwithstanding that the prisoner or prisoners may have been  
brought before the Magistrate before the conclusion of the  
police investigation, should be answered in the affirmative.

Holding this view, the second question of reference does not  
arise, and need not be dealt with.

(1) I. L. R., 4 Calc., 696,