

## APPELLATE CRIMINAL.

*Before Mr. Justice Munro and Mr. Justice Sankaran-Nair.*

EMPEROR

v.

CHOTA SINGH.\*

1908.  
December  
14, 22.

*Prisons Act IX of 1894, s. 52—Presidency Magistrate not a District Magistrate or Magistrate of the first class within s. 52 of the Act.*

A Presidency Magistrate is not a District Magistrate or Magistrate of the first class within the meaning of section 52 of the Prisons Act and he has no jurisdiction to try prisoners for offences under that section.

APPEAL under section 417 of the Code of Criminal Procedure against the judgment of acquittal passed on the accused by Mir Sultan Mohidin, Presidency Magistrate, Egmore, Madras, in Calendar Case No. 7361 of 1908.

The facts are sufficiently set out in the judgment.

*Nugent Grant*, the Acting Crown Prosecutor, for appellant.

*V. N. Kuppu Rao* for accused.

JUDGMENT.—One Chota Singh was tried by a Presidency Magistrate for an offence under section 52 of the Prisons Act IX of 1894 and was acquitted. Against the acquittal the present appeal has been filed by Government. Objection is taken on behalf of Chota Singh that the Presidency Magistrate had no jurisdiction to try the offence.

Under section 52 of the Prisons Act, prisoners guilty of certain offences may be forwarded by the Superintendent to the Court of the District Magistrate or of any Magistrate of the first class having jurisdiction. No specific mention of Presidency Magistrates is made, and the question is whether either of the terms "District Magistrates" or "Magistrate of the first class" includes a Presidency Magistrate for the purpose of the Prisons Act. The terms "Magistrate," "District Magistrate," and "Magistrate of the first class" are not defined in the Prisons Act, and in the General clauses Act the only one of these three terms defined is "Magistrate," which is said to include all persons exercising all or any of the powers of a Magistrate under the Code of Criminal

\* Criminal Appeal No. 617 of 1908.

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Procedure. The term "Magistrate" occurs in sections 42 and 54 of the Prisons Act and must be interpreted according to the definition in the General Clauses Act. The terms "District Magistrate" and "Magistrate of the first class," not being defined in the General Clauses Act, must, in accordance with the recognised rules of interpretation, be given their ordinary meanings unless, as is not the case, there is something in the Prisons Act itself to indicate the contrary. The ordinary meanings of the terms are undoubtedly those to be gathered from the Code of Criminal Procedure. Sections 10 and 12 of the Code show that District Magistrates and Magistrates of the first class are appointed only in districts outside the Presidency towns. It is thus clear that ordinarily a Presidency Magistrate would not be included in the terms "District Magistrate" and "Magistrate of the first class." Section 11 (2) of the Prisons Act provides that the Superintendent of a Prison other than a central prison or a *prison situated in a Presidency town* shall obey certain orders given by the District Magistrate. The term is manifestly used in the section quoted in the meaning of the Code of Criminal Procedure, and, in the absence of anything to the contrary, must be similarly construed in other sections of the Act. Many instances can be cited in which the Legislature has insisted on the difference between a Presidency Magistrate and a District Magistrate or Magistrate of the first class. Thus, in the Lepers Act III of 1898, it was considered necessary in section 2 (5) to define "District Magistrate" as including a Chief Presidency Magistrate thereby showing that "District Magistrate" does not ordinarily include "Presidency Magistrate." Sections 8 and 10 of the same Act confer certain powers on Presidency Magistrates or Magistrates of the first class. In section 3 of the Income-tax Act II of 1836, "Magistrate" is defined as meaning a Presidency Magistrate or a Magistrate of the first or second class. Section 71 of the Stamp Act II of 1899 lays down that no Magistrate other than a Presidency Magistrate or a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under the Act. In section 3 of Opium Act "Magistrate" is defined as meaning in the Presidency town a Presidency Magistrate and elsewhere a Magistrate of the first class, or when specially empowered a Magistrate of the second class. Reference may also be made to section 4 of the Indian Volunteers Act XX of 1869 for a similar distinction.

Finally, it may be pointed out that the first proviso to section 52 of the Prisons Act lays down that the District Magistrate may transfer a case for enquiry and trial to any Magistrate of the first class. We must take it, in the absence of anything to the contrary, that the term "Magistrate of the first class" has the same meaning in the proviso as in the body of the section. If therefore we interpret "Magistrate of the first class" as including a Presidency Magistrate, a District Magistrate must be held empowered to transfer cases to a Presidency Magistrate. Ordinarily a District Magistrate has power to transfer cases only to some Magistrate subordinate to him—*vide* section 192 of the Code of Criminal Procedure, and cannot therefore transfer a case to a Presidency Magistrate or to any other Magistrate outside his own districts. We think the power of transfer given by the proviso to section 52 of the Prisons Act must be read subject to the limitation imposed by the Criminal Procedure Code.

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We therefore find that the Presidency Magistrate had no power to try Chota Singh. We set aside his acquittal and direct that he be discharged as the proceedings before the Presidency Magistrate were void.

## APPELLATE CIVIL—FULL BENCH.

*Before Sir Arnold White, Chief Justice, Mr. Justice Miller and  
Mr. Justice Abdur Rahim.*

GAVARANGA SAHU (PLAINTIFF), PETITIONER

v.

BOTOKRISHNA PATRO AND OTHERS (DEFENDANTS AND  
HIS LEGAL REPRESENTATIVES), RESPONDENTS.\*

1908.  
November  
5, 0, 25,  
1909.  
March 9.

*Limitation Act, XV of 1877, s. 4—Civil Procedure Code, Act XIV of 1882, s. 54 (b)—Plaint, though not sufficiently stamped is 'plaint' within the meaning of s. 4 of the Limitation Act—Suit not barred when plaint insufficiently stamped is presented within period of limitation, though stamp deficiency made good after such period.*

When a plaint is presented on a paper insufficiently stamped within the prescribed period of limitation, and time is given by the Court under section 54 (b) of the Code of Civil Procedure to make good the deficiency

\* Civil Revision Petition No. 446 of 1906.