

CRIMINAL MOTION.

Before Mr. Justice Mitter and Mr. Justice Norris.

IN THE MATTER OF JHABBU SINGH AND OTHERS (PETITIONERS).*

Limitation—Act XV of 1877, s. 12—Exclusion of time in obtaining copy of judgment.

1884
April 22.

Certain accused persons were convicted on the 29th February 1884, and made their first application for a copy of the judgment on the 25th March, tendering stamped paper for such copy on the 26th and 29th March. The copy was prepared on the 30th, and the prisoners, who had been admitted to bail on the 5th March, presented their appeal on the 7th April 1884, which was rejected as being out of time. *Held*, that the appeal ought to have been admitted.

On the 29th February 1884 two men were convicted of rioting and sentenced to six months' rigorous imprisonment. On the 5th March they presented a petition through a Mukhtar, stating that they had been unable to appeal because they were unable to obtain a copy of the judgment (at that time they had as a matter of fact made no attempt to do so); but that they would appeal as soon as they obtained a copy, and they further asked to be admitted to bail. The Sessions Judge released them on bail. The prisoners applied for a copy of the judgment on the 25th March, the stamp sheets of paper for the copy being filed on the 26th and 29th March; on the 30th March the copy was ready for delivery. The memorandum of appeal with the judgment were presented on the 7th April 1884; the portion of the order of the Subordinate Judge refusing to receive the appeal ran as follows: "It appears at first sight that the appeal is out of time; it should have been presented by the 30th March; it remains to be seen how many days are to be deducted in calculating the period of thirty days allowed by law."

"On examining the copy of judgment, I find that the application for the copy was made on the 25th March; the requisite stamped sheets were filed on the 26th and 29th, and the copy was ready for delivery on the 30th. How many days are there to be deducted?

"In my opinion only two, because by 'the requisite stamped sheets' is meant the full number of stamped sheets required.

* Criminal Motion No. 123 of 1884, from an order of W. H. Page, Esq., Officiating Sessions Judge of Bhagulpore, dated the 8th April 1884.

But the appellant's pleader asks, how could the appellant know the number required? I answer that he had had from the date of his release to the date of his application for copy (nearly three months) to find out. The appellant says he had not funds, but if he had applied from the jail for a copy he would have received it without any cost. If he had applied for a copy within a few days of his conviction, I should have said that he had a right to claim a deduction of the whole time. I find that the appeal is presented out of time and therefore decline to receive it."

The prisoners applied to the High Court under the revisional sections of the Code of Criminal Procedure.

Baboo *Juggut Chunder Bannerjee*, and Baboo *Taruck Nath Dutt* for the applicants.

No one appeared for the Crown.

The opinion of the High Court was delivered by

MITTER, J.—We think that the appeal was within time and should have been registered. We accordingly direct it to be registered and heard by the Sessions Judge.

Order reversed.

CRIMINAL REFERENCE.

Before Mr. Justice Prinsep and Mr. Justice O'Kinealy.

QUEEN EMPRESS v. NGA THA MOUNG AND OTHERS.*

Burmah Courts—Transfer of Case—Criminal Procedure Code, s. 178—Reference to High Court—Burmah Courts Act (Act XVII of 1875) s. 80.

The local Government has no power under s. 178 of the Code of Criminal Procedure to transfer for trial to the Court of a Commissioner a criminal case duly committed for trial to the Court of the Recorder of Rangoon; but the local Government has the power to transfer a case from the District of Rangoon to the Sessions division of Pegu.

THIS was a reference under s. 80, cl. (b), of the Burmah Courts' Act (Act XVII of 1875) from the special Court constituted by that Act. The question referred was whether the local Government has power to transfer for trial to the Court of a Commissioner a criminal case duly committed for trial to the Court of the Recorder of Rangoon. The facts of the case are fully set out in the opinions of the Judicial Commissioner of British Burmah,

* Criminal Reference No. 1 and letter No. C. R. 9.1 from Registrar, Special Court of British Burmah, dated Rangoon, the 10th January 1884.

1884

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April 4.