

execution." We are of opinion that no reason has been placed before us that would warrant us in not following the ruling of our Court.

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We therefore dismiss this appeal with costs.

Appeal dismissed.

CRIMINAL REFERENCE.

Before Mr. Justice Mitter and Mr. Justice Maclean.

QUEEN EMPRESS v. NOWAB JAN.*

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April 3.

Criminal Procedure Code (Act X of 1882), ss. 248, 259, 345, 437—Further enquiry, Power of District Magistrate to direct—"Subordinate Magistrate"—Compoundable offence.

A criminal charge under s. 448 of the Indian Penal Code having been instituted, the accused was sent up by the Police before a Deputy Magistrate of the first class. Previous to any evidence being taken the complainant intimated to the Magistrate that the case had been amicably settled, and that he did not wish to proceed further in the matter, upon which the Magistrate recorded an order, "Compromised; defendant acquitted." Subsequently the Magistrate of the district, relying upon ss. 248 and 259, and professing to act under s. 437 of the Criminal Procedure Code, directed the Deputy Magistrate to send up the parties and proceed regularly with the case.

Held, that ss. 248 and 259 had no bearing on the case, and that the mere fact of the accused had been sent up by the Police did not prevent the offence, which was legally compoundable, from being compromised, and that consequently the order of the Deputy Magistrate was perfectly correct and legal.

Held further, that in addition to the Magistrate's order not being warranted by the fact, it was *ultra vires*, inasmuch as the Deputy Magistrate was a Magistrate of the first class and not "inferior" to the District Magistrate and to give the District Magistrate jurisdiction to call for a record under s. 435 from another Magistrate and to act under s. 437, the latter must be inferior. *Nobin Kristo Mookerjee v. Russick Lall Laha* (1) followed.

THE facts of this reference were as follows:—

On the 2nd December 1883 Pir Bux complained to the Police at thanua Mahinapore against Nowab Jan, charging him with house-trespass. The Police sent up the accused to the Deputy Magistrate of Lalbagh for trial, under s. 448 of the Indian Penal

* Criminal Reference No. 87 of 1884 and letter No. 296 from the order made by T. M. Kirkwood, Esq., Officiating Sessions Judge of Moorshedabad, dated the 17th March 1884.

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Code, on the 6th December. After two adjournments, when no evidence had been taken, the case being fixed for the 21st December, an application was made by Fir Bux to the Deputy Magistrate on the 20th December, informing him that the matter had been arranged and that he did not wish to proceed with the prosecution. The case being one under s. 448 of the Indian Penal Code, and being one in respect of a compoundable offence, the Deputy Magistrate on the same day recorded an order, "Compromised; defendant acquitted," and the defendant was accordingly released.

Thereupon the District Magistrate on his own motion, or at the instance of the Police, recorded certain remarks to the effect that when a case had been sent up by the Police no withdrawal by any private person could stop its being proceeded with, and relied upon ss. 248 and 259 of the Criminal Procedure Code in support of that view. He thereupon ordered the Deputy Magistrate, "under the closing portion of s. 437, to send for the parties and to proceed regularly with the case."

This course having been pursued and having resulted in the conviction of the accused and in a sentence of imprisonment being passed, the Sessions Judge, on the proceedings being brought to his notice, submitted the record for the order of the High Court, addressing at the same time a letter to the Registrar of the High Court, of which the following is an extract:—

"The District Magistrate was wrong in thinking he could set aside that order of acquittal. Section 437 of the Criminal Procedure Code dealt with a different condition of things. He was wrong in discussing ss. 248 and 259, which have nothing whatever to do with s. 345 of the Criminal Procedure Code, and deal with altogether different contingencies. The offence being under s. 448 of the Indian Penal Code, and the person whose property had been trespassed on having compounded it, the Deputy Magistrate was compelled to acquit. Nowab Jan, having been acquitted, and rightly so, was not liable to be tried again for the same offence, and to be convicted and sentenced."

No one appeared on the hearing of the reference.

The judgment of the Court was delivered by

MITTAR, J. (MACLEAN, J., concurring).—We have no doubt that the District Magistrate has mistaken the law throughout.

It appears that on a charge preferred by Pir Bux, the Police sent up one Nowab Jan for trial, under s. 448 of the Penal Code.

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Pir Bux subsequently, on 19th December, petitioned the Magistrate (of the first class), asking that as the case had been amicably settled, and that as he did not wish to proceed with the case, it might be disposed of.

The Magistrate accordingly endorsed the petition, "Compromised; defendant acquitted."

As it appears that Pir Bux was the person described in the third column of the table attached to s. 345, and that the offence is described in the second column of that table, it is clear that the order of the Magistrate of 20th December is quite correct and legal.

Neither s. 259 nor s. 248 of the Criminal Procedure Code has any bearing on the case; as all that is necessary regarding the compounding of the offence that was under investigation is to be found in s. 345, and we do not understand the law to be that no Magistrate under any circumstances has power to allow a case that is sent up by the Police to be withdrawn.

The District Magistrate's order purporting to be passed under s. 437 was therefore not warranted for the reasons given above; and it was also *ultra vires* from the fact that Mr. Beames is a first class Magistrate and is not therefore inferior to the District Magistrate. To give the District Magistrate jurisdiction under s. 435 to call for a case from another Magistrate, the latter must be "inferior." See *Nobin Kristo Mookerjee v. Russick Lall Laha* (1).

We set aside all the proceedings subsequently to the 20th December, including the conviction of Nowab Jan, dated 27th February 1884, and the sentence passed upon him.

Conviction set aside.