FULL BENCH.

1877. *July* 13.

EMPRESS OF INDIA v. KANCHAN SINGH.

*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield.**

THE EMPRESS OF INDIA v. KANCHAN SINGH.

Act X of 1872, ss. 4, 296—Definition of Sessions case—Power of Sessions Court.

The appellant after his discharge by the Assistant Magistrate, upon a charge under s. 457 of the Indian Penal Code, was committed to the Sessions Court by order of the Sessions Judge under the Criminal Procedure Code, 1872, s. 296, upon charges under ss. 380 and 457 of the Penal Code.

Held by the Full Bench (Spankie and Oldfield, JJ., dissenting,) that the commitment was illegal, and that "session case" within the meaning of s. 296 of the Code of Criminal Procedure, is a case exclusively triable by the Court of Session.

Kanchan Singh, who was convicted of theft and lurking house-trespass in order to the comission of an offence, by the officiating Sessions Judge of Mainpuri, appealed to the High Court on the ground that the trial in the Session Court held upon the Sessions Judge's order to the Magistrate to commit the case to the Sessions Court, after the said Magistrate had discharged the prisoner, was invalid because the Court of Session had no power to order a commitment in the case of offences under ss. 380 and 457 of the Indian Penal Code, which are offences not exclusively triable by the Court of Session, and therefore, do not come within the meaning of "session cases," in s. 296 of the Code of Criminal Procedure.

PEARSON, J., referred the question to a Full Bench for decision, in the following order of reference :

It appears that in the case of Huria and others (1), Mr. Justice Spankie has ruled contrary to the ruling of the 26th May 1873 (2), and that in the case of Charles John Sibold (3), the learned Chief Justice has expressed an opinion that it is erroneous. It is, however, supported by the ruling of the Calcutta Court, dated 17th February 1874, Jaykaran Singh, and another, petitioners *v.* Man Pathack, and by the ruling of the Madras Court, dated the 5th November 1873 (4).

* Criminal appeal from an order of G. E. Watson, Esq., Sessions Judge of Mainpuri, dated the 9th March 1877.

(1) Unreported, decided on the 20th January 1877.
(2) H. C. R., N.-W. P., 1873, p. 168.
(3) Unreported, decided on the 9th April 1875.
(4) Mad. H. C. R., 1871-74, p. 28 of Rulings.

1877.

EMPRESS OF INDIA v. KANCHAN SINGH.

That the point in question may be definitively settled, and conflicting rulings be avoided in future, I refer it to a Full Bench.

Mr. *Leach* for appellant, the petitioner.

The *Junior Government Pleader* (Babu *Dwarka Nath Banerji*) for the Crown.

The following judgments were delivered by the Court :—

STUART, CJ.—In this reference the question is whether the Sessions Judge of Mainpuri was justified in ordering a commitment to this Court on a charge under ss. 457 and 380 of the Indian Penal Code, as being a "session case" within the meaning of s. 296 of the Criminal Procedure Code, read in connection with s. 4 of the same Code where the expression "session case" is defined. The procedure which gave rise to the appeal to this Court, and the question submitted by this reference, appear to be as follows :—The appellant, Kanchan Singh, and another accused person, named Mathri, were brought up before and tried by the Assistant Magistrate on a charge under s. 457 of the Indian Penal Code, with the result of Mathri's conviction, and the appellant's discharge. This discharge of the appellant, Kanchan Singh, being unsatisfactory to the Sessions Judge, he ordered a commitment to the Session Court, and the appellant was committed, tried, and convicted there accordingly. The validity of such order of commitment is one of the pleas in appeal.

In s. 4 of the Criminal Procedure Code the following is the definition of a "session case." "Session case means and includes all cases specified in column seven of the fourth schedule to this Act as cases triable by a Court of Session, and all cases which Magistrates commit to a Court of Session, although they might have tried them themselves." Now if we had nothing else to consider than the true construction of this section itself; our task would be an easy one, and here I must say that we are not much assisted by some of the remarks made by Mr. Justice Jardine in the case mentioned in the present reference. (1) In the report of his judgment he is made to say that the words "triable by a Court of Session in s. 4 must be read as if they had been printed in inverted commas," but, in

(1) H. C. R. N.-W. P., 1873, p. 168.

my opinion, it is not legitimate to interpret laws in this manner, whether by the importing of words of limitation, or extension, or of fanciful punctuation. If the inverted commas had been used, as suggested, the meaning and application of s. 4 would have been altogether changed from what it is in its present shape. I could understand the suggestion that these words "triable by a Court of Session" might, with advantage, have been imported into s. 296 immediately after the words "session case," but it is altogether beside the rules of legal construction to attempt to interpret such a section as s. 4 by such a device. Then, again, I must express my dissent where Mr. Justice Jardine says, it is "on principle wrong that a Session Judge should have power to order a committal in spite of a discharge by a Magistrate, who had himself full power to try and acquit. Where the Magistrate's powers are restricted to preliminary enquiry, it is reasonable that the Session Court should have power to control the result of that enquiry. But where the Magistrate could pass a final order of acquittal, I see no reason for giving the Session Court power to disturb this order, because it takes the form of a discharge." On the contrary, I not only see nothing wrong on principle, but, judging from my own experience in criminal cases in this Court, it would, I consider, be very convenient and advantageous if Session Judges had such a power of correction and control over their Magistrates. But all these speculations, and fanciful views of legal interpretation, are really beside the question of the true construction of s. 4, nor are they necessary to the elucidation of s. 296, the correct application of which, in my view, depends, at least so far as the present case is concerned, on a much simpler test, which I do not find noticed either in the judgment of Mr. Justice Jardine, or in any of the other authorities which have been referred to. As to s. 4 itself, anything more simple or more obvious in meaning, than the language of that section, I cannot imagine. It very plainly provides that "session case" means and includes all cases triable by a Court of Session itself, that is, if you prefer it, by a Court of Session only, or exclusively, and also all cases which Magistrates commit to a Court of Session for trial. These are the two classes of cases which by s. 4 are to be understood as session case, the one neither more nor less so, than the other. Nor is the definition, given in this s. 4 of a Magistrate's

1877.

EMPRESS OF INDIA v. KANCHAN SINGH.

case, in the slightest degree inconsistent with such a definition of a session case. A Magistrate's case, the section says, means and includes all cases triable by Magistrates, and all cases which Magistrates try themselves, although they might have committed them for trial to a Court of Session, being the very cases which, when committed to a Court of Session, become *ipso facto* session cases. In fact it comes to this, that by s. 4 the term "session case" applies to cases triable by a Court of Session alone, and also all other cases (doubtful cases as Mr. Justice Jardine calls them, although why they should be so described I cannot see), in which the Court of Session has, by force of the commitment to it, concurrent jurisdiction with the Magistrate.

Such are the observations suggested to me by the consideration of s. 4 taken by itself, and without reference to any other part of the Criminal Procedure Code. But when we come to s. 296, we find it necessary to understand a session case in a more limited sense. The second part of that section provides that "in session cases, if a Court of Session or Magistrate of the district considers that a complaint has been improperly dismissed, or that an accused person has been improperly discharged by a subordinate Court, such Court or Magistrate may direct the accused person to be committed for trial upon the matter of such complaint, or of which the accused person has been, in the opinion of the Court or Magistrate, improperly discharged." Now there can be no doubt that this section strictly and literally applies to cases triable by the Court of Session itself, but does it apply to these cases exclusively, and not to the second class of session cases which s. 4 defines? The answer to this question is supplied by the definition given in s. 4 of the other class of session cases, namely, those which Magistrates commit for trial to the Court of Session. The word "commit" is I consider a governing word in this sentence, and everything depends upon its right construction. If it could be taken to mean "may commit," then, unquestionably, s. 296 would let in these Magistrates cases where a commitment had not been made. But as I view this part of s. 4, the fact of the committal to the Court of Session, is the essential quality of such session cases. On the other hand, the remedy provided by s. 296 assumes that there had been no previous commit-

ment to the Court of Session at all, and the judge is simply empowered, in that state of things, to order a commitment. It follows, therefore, that such remedy cannot contemplate the second class of session cases defined by s. 4, for there, as I have pointed out, commitment to the Court of Session, as a fact and proceeding already completed, is assumed or taken for granted, and no other or further order of commitment is necessary, or, from the nature of the case, possible. Any other view would involve the absurdity of the Sessions Judge ordering a commitment which had already been made to the Sessions Court by the Magistrate himself. In fact in no view of it can s. 296 be read as applicable to a Magistrate's case, and the question of commitment or no commitment, is immaterial, for if the Magistrate did not commit the present case to the Court of Sessions, and he in fact did not, then the case is not a session case within the meaning of s. 4, while if he did commit, there was no necessity, and no reason for any other commitment, whether by the Judge's order or otherwise. The result, therefore, is that the session cases referred to in s. 296, are session cases triable by the Court of Session only, and the present case being a Magistrate's case, and not one triable by the Court of Session only, the Judge's order to commit it, was illegal.

I think it unnecessary to make any further remarks on the rulings referred to in the order of reference. In my own judgment in the case of *Sibold* (1) I do not appear to have entered into the question very fully, and I remark that the case in which Mr. Justice Jardine's ruling was made, was different from the one then before me, and in the glance I then gave to the matter, I may not have sufficiently considered the phraseology of s. 4. As to the Calcutta (2) and Madras (3) cases, they appear to have been properly disposed of; although I observe that the Calcutta judgment (4) simply repeats Mr. Justice Jardine's argument, and the Madras ruling appears to have been made by the Court itself, on a reference to it, without any argument from the bar.

(1) Unreported, decided on 9th April 1875.

(2) Jay Karan Singh v. Man Pathack, 17th February 1874.

(3) 7 Mad. H. C. R., 1871-74, p. 28 of Rulings.

(4) Jay Karan Singh v. Man Pathack, 17th February 1874.

1877

EMPRESS OF INDIA v. KANCHAN SINGH.

PEARSON, J.—I concurred at the time in the ruling (on the 26th May 1873), by the late Mr. Justice Jardine in the case of the Queen *versus* Sital Prasad (1), and on further consideration I see no good ground for questioning its correctness. The reasons assigned by him in support of it are, in my opinion, as conclusive as they are well nigh exhaustive. Little has been left by him to be said on the subject. The terms used in the designation of a session case in s. 4 of Act X of 1872 "all cases specified in column seven of the fourth schedule to this Act as triable by a Court of Session," are not synonymous with all cases triable by a Court of Session. We find various specifications in the seventh column of the schedule; some cases are specified as triable by a Court of Session; others as triable by a Court of Session or by a Magistrate of the first class; others again as triable by a Magistrate of the first or second class; others as triable by any Magistrate, and so on. Evidently, as it seems to me, those simply specified as triable by a Court of Session, which are triable by that Court exclusively, are those indicated in the first part of the definition as session cases.

The definition of a session case, is followed by the definition of a Magistrate's case for the purpose of distinguishing the one from the other. The two definitions comprehend all triable cases, and read together, explain one another.

There are many cases which a Magistrate may either try himself, or commit for trial to a Court of Session; and the definitions declare such cases, if tried by the Magistrate, to be Magistrate's cases, and if committed to the Court of Session, to be session cases.

Session cases, therefore, include along with cases exclusively triable by a Court of Session, and Magistrate's cases include along with cases exclusively triable by Magistrates, cases triable by them or by a Court of Session, which they, in the exercise of their discretion, elect to try themseves.

The ruling gives full effect and meaning to every part of the definitions, and is perfectly consistent with, and agreeable to them. There is, too, much force and pertinence in the remark that "it seems, on principle, to be wrong that a Sessions Judge should have power to order a committal in spite of a discharge by a Magistrate who

(1) H. C. R., N.-W. P., 1873.

had himself power to try and acquit. Where the Magistrate's powers are restricted to preliminary enquiry, it is reasonable that the Session Court should have power to control the result of that enquiry. But where the Magistrate could pass a final order of acquittal, I see no reason for giving the Session Court power to disturb that order because it takes form of a discharge."

The case out of which the present reference has arisen is, according to the ruling in question, a Magistrate's case. It is not a case exclusively triable by a Court of Session, nor was it committed to that Court. It was triable by a Court of Session, or by a Magistrate of the first or second class; and was tried and disposed of by a Magistrate. To rule that this is a sessions case on the ground that, the terms before quoted in the definition of a session case, do not mean cases exclusively triable by a Court of Session, but include cases triable by a Court of Session and a Magistrate, would lead to this result, that all cases triable by a Court of Session, or a Magistrate, are both session cases and Magistrate's cases: and would thus confound what the definitions were carefully designed to distinguish.

TURNER J.—It appears to me that the definitions of "Sessions case" and "Magistrate's case," respectively, must be read together, and that so read, all difficulty in their construction disappears.

There are some cases specified in the schedule as triable by a Court of Session, there are others specified in the schedule as triable by Magistrates, again, there are cases specified as triable either by a Magistrate or a Court of Session, and, lastly, there are cases in which though ordinarily triable by a Magistrate, an accused person, if he be an habitual offender, may be committed to the Court of Session.

Now in order to bring all these classes under two heads, the definitions, as I understand them, declare that sessions cases mean and include all cases triable by a Court of Session exclusively, and all cases of the classes in which jurisdiction is given to the Sessions Court, or to the Magistrate if the Magistrate elects to commit them, and that Magistrate's case means and includes all cases specified as triable by Magistrate exclusively, and also all cases of those classes

1877.

EMPRESS OF INDIA v. KANCHAN SINGH.

in which jurisdiction is given to the Court of Session or the Magistrate, if the Magistrate elects to try himself. If the other construction be adopted, and the term triable by a Court of Session in the first definition, be held to include cases triable by the Court of Session or the Magistrate, a case of that class tried by a Magistrate will fall under both definitions, and the anomaly will arise which was pointed out by Mr. Justice Jardine in Regina *v.* Sital Prasad (1) that a Session's Judge may order a committal if the Magistrate discharges an accused person whom he had power to try and acquit, when the Sessions Judge cannot interfere to set aside an acquittal, except on the appeal of the Government. Seeing that the construction adopted by Mr. Justice Jardine has approved itself to the High Courts of Calcutta and Madras, I am the more confident in accepting it.

SPANKIE, J.—(after quotation of ss. 4 and 296 of Act X of 1872 continued):—

It is contended that a sessions case means a case triable by the Court of Session only.

The late Mr. Justice Jardine in this Court (1) held that the words "triable by a Court of Session in s. 4 must be read as if they had been printed in inverted commas." This he considered would limit the meaning "of cases specified" as triable by a Court of Session alone. This view was supported by a consideration of the two definitions together. We might expect, the learned Judge remarked, that "the two would just cover all possible cases, and this upon the view above expressed is found to be the fact. Sessions cases include all those which the Court of Session alone can try, and such as are committed to the Court of Session. Magistrates cases include all those which only Magistrates are to try, and so many of the doubtful cases as the Magistrates do, in fact, try themselves. It seems, moreover, on principle to be wrong that a Session's Judge should have power to order a committal in spite of a discharge by a Magistrate who had himself full power to try and acquit; when the Magistrate's powers are restricted to preliminary enquiry, it is reasonable that the Sessions Court should have power to con-

(1) H. C. R., N.-W. P., 1873, p. 168.

1877

EMPRESS OF INDIA v. KANCHAN SINGH.

trol the result of that enquiry. But where the Magistrate could pass a final order of acquittal, I see no reason for giving the Sessions Court power to disturb his order, because it takes the form of discharge." It appears that Mr. Justice Pearson holds the same views, and that the Calcutta (2) and Madras (3) Courts have ruled to the same effect, that the Sessions Court can only order committal in cases exclusively triable by itself.

Referring to s. 4 I find nothing to support the view that sessions case means cases exclusively triable by a Court of Session. But I do find in the plainest language possible, that a sessions case means and includes all cases specified in column seven of the fourth schedule as cases triable by a Court of Session, and all those cases which Magistrates commit to a Court of Session, although they might have tried them themselves.

It is true that on reading the definition of a Magistrate's case, it would at the first glance seem that until a Magistrate had actually committed a case which he could have tried himself, it would not become a sessions case. But this construction would only hold good for the purpose of defining what is a Magistrate's case, and what a sessions case, and of so far regulating the exercise of their concurrent jurisdiction. This construction, however, does not necessarily limit the power of revision given by s. 296 to the Sessions Judge and District Magistrate. These words "sessions case" and "Magistrate's case" are only to be met with twice, respectively, in the code, in ss. 4, 296, and 74. In s. 74, which deals with offences committed by European British subjects, the words "a Magistrate's case" clearly refer to a case which is specified in column seven, sch. four, as triable by a Magistrate, which might be sent to the Sessions, but which the Magistrate is *not* to send to the Sessions, if he thinks that he can adequately punish it, by any sentence warranted by law, not exceeding three months' imprisonment, or a fine up to one thousand rupees, or both. If he thinks that he cannot adequately punish it under s. 74, then he must commit to the Sessions Court, or High Court, as the case may be, under s. 73. This, it is true, is a special part of the code applying

(2) Jay Karan Singh v. Man Pathack, 7th February 1874.

(3) Mad. H. C. R., 1871-74, p 28 of Rulings.

1877

EMPRESS OF INDIA v. KANCHAN SINGH.

to European British subjects alone. But when we examine chapter XV and ss. 89, 195, and 196, we find in the first section that the procedure to be adopted refers to cases triable (not exclusively triable) by a Sessions Court or High Court. By s. 195, a Magistrate can discharge an accused person, if he thinks there is no ground for committing him and dispose of the case himself under chapters XV, XVII, or XVIII, as the case may be. By s. 196 if the Magistrate considers that the evidence justifies commitment for an offence exclusively triable by the Court of Session or High Court, he is to make the commitment to such Court, and he is to do the same, if he thinks that the case is one which ought to be tried by the Sessions Court, though it be not an offence exclusively triable by the Sessions Court. The section is mandatory where the case is exclusively triable by the Sessions Court, and permissory in other cases. But here we have *exclusively* used for a purpose; we shall find in s. 296, which deals with discharge under s. 196, no such use of the word at all. S. 296 refers to the superintendence of the subordinate Courts by the Sessions Judge and Magistrate of the district, and to the revision which they may exercise. The first para. provides for the report of cases to this Court in which the judgment or order is contrary to law, or the punishment too severe or inadequate. The second para. provides, that in sessions cases, if a Court of Session or Magistrate of the district considers that a complaint has been improperly dismissed, or that an accused person has been improperly discharged by a subordinate Court, such Court or Magistrate may direct the accused person to be committed for trial. Now here we go back to the definition of a sessions case, and find that there is no such limit in s. 4, as that contended for, *viz.*, that those cases only are sessions cases, which can be tried by the Sessions Court alone. All those cases in fact are sessions cases which are specified in column seven of the fourth schedule, as triable by the Court of Session, including all the cases which Magistrates commit to a Court of Session though they might have tried them themselves. They are all cases specified in column seven, schedule four and are triable by the Court of Session, though, if the Magistrat etries those himself which are within his jurisdiction to punish, they are not sent up to the Sessions. But they are not the less sessions cases, though

they are within certain limits jointly triable by the Sessions Court, and Magistrate of the first class, and because they are so, both the Sessions Court, and the Magistrate of the district, have the power to revise improper dismissal of complaints and discharges ordered by the subordinate Magistrates.

This superintendence is part of their office. They are in a certain degree responsible for the proper discharge by their subordinates of their judicial duties. All the Magistrates are subordinate to the Magistrate of the district, but neither the Magistrate of the district nor the subordinate Magistrates are subordinate to the Sessions Judge, except to the extent and in the manner provided by the Act (s. 37). Under the old Act the subordination of the Magistrate to the Magistrate of the district was not clearly recognised, and 23 g. was added by s. 4 of Act VIII of 1869. So by s. 435 of the old Act, the Session's Judge only could order commitment of an accused person, if he was charged with an offence triable by the Sessions Court exclusively. But the section was altered by s. 4, Act VIII of 1869, and he has now the power of doing so in cases in column seven, schedule four, not only triable by himself, but also by the Magistrate of the district. The Magistrate of the district also had the power of directing commitment, or inquiry, when the Magistrate who had discharged the accused person, or dismissed his complaint without any investigation, was a subordinate Magistrate. But under the old Act, subordinate Magistrates were of two classes only, one with powers up to six months, and the other up to one month, as provided by s. 22 of Act XXV of 1861. Under the present Act there are three classes of Magistrates, and all are subordinate to the Magistrate of the district. Thus, it became necessary, all Magistrates being subordinate to the Magistrate of the district, to enlarge the powers of that officer as a Court of superintendence and revision, and so both the Court of Session and the Magistrates of districts were empowered by the second para., s. 296 to direct a committal where a complaint had been improperly dismissed, or an accused person improperly discharged, in sessions cases. If we are to accept the view contended for by the appellant, then the alterations, as regards this power of revision made since Act XXV of 1861 was passed, would have no mean [illegible], and there would be no reason for the omission of such word [illegible]

1877

EMPRESS OF INDIA v. KANCHAN SINGH.

exclusively triable by the Court of Session, which have no place in s. 4 and s. 296 of the present code.

There is nothing opposed to principle, in allowing this power of revision to the Court of Session and district Magistrate. A Magistrate of the first class may improperly discharge an accused person under s. 195, that is to say, in cases triable by a Court of Session, even though he may have under the provisions of that section proceeded under Chapters XV and XVII, or XVIII. If the Magistrate of the district or Court of Session considered that there were sufficient grounds for commitment, then the accused would have been improperly discharged. Where a Magistrate improperly discharges an accused person under s. 215, the High Court can order him to be tried, or committed for trial; a discharge is not equivalent to an acquittal, under either section. The Sessions Court is empowered to guard against a miscarriage of justice, in cases triable by itself. The High Court has plenary power in all cases of improper discharge. No question of acquittal is applicable to the point before us. An acquittal may be appealed against by the Government. This is an exclusive privilege of Government. But private prosecutors, so to speak, have no other remedy but that afforded by ss. 296 and 297 of the code.

Being of opinion that it is not for us who administer the law, to import into s. 4 and s. 296 of the Act, the words "exclusively" triable, or by the Court of Session "alone," I would answer the reference by saying that the Sessions Judge had the power to order the committal.

OLDFIELD, J.—I agree in the view taken by Mr. Justice Spankie of the question referred.

ORDER.—In accordance with the ruling of the majority of the Full Bench, Pearson, J., passed the following final order in the above case.

The second ground is sustained by the opinion of the majority of the Full Bench. The proceedings of the Sessions Court must, therefore, be set aside as illegal, and the sentence passed on the appellant is accordingly annulled, and his release is ordered.

Conviction quashed.