

CRIMINAL JURISDICTION.

1876
May 11.*(Mr Justice Pearson)*

QUEEN v. GUR BAKSH AND OTHERS.

Act X of 1872, ss. 467, 468, 469, 471—Prosecution—Procedure.

S 471, Act X of 1872, does not deprive the Court, which possesses the power of trying an offence mentioned in ss. 467, 468, and 469, of the power of trying it when committed before itself (1).

The petitioners in this case gave evidence on behalf of certain persons who were accused of assault and robbery and pleaded an alibi. The accused persons were convicted and the Magistrate who tried them then tried the petitioners for giving false evidence, under s. 193, Indian Penal Code, and convicted them. His order was affirmed by the Court of Session on appeal.

The petitioners applied to the High Court for a revision of the Magistrate's order on the ground that, under s. 471, Act X of 1872, he was not competent to try them himself, being the Court before which the offence was committed.

Mr. *L. Dillon*, for the petitioners.

The *Junior Government Pleader* (*Babu Dwarika Nath Banarji*), for the Crown.

PEARSON, J.—S. 471 of the Code does not expressly prohibit the procedure adopted by the Magistrate in this case, and unless it does so, it is not contended that he was not competent to adopt it. What that section does is only to authorize any Court, Civil or Criminal, which is of opinion that there is sufficient ground for inquiring into any charge such as one under s. 193, Indian Penal Code, after making necessary preliminary inquiry, either to commit the case itself, or to send the case for inquiry to any Magistrate having power to try or commit for trial the accused person for the offence charged. This provision is very necessary for a Court not having power to try the offence itself, as for instance a Civil Court, but does not necessarily deprive a Magistrate of any power which he may possess to try the case himself. I therefore decline to interfere in the present case and reject this petition.

(1) So held in *Queen v. Jagat* *Queen v. Kutaran Singh*, I. L. R., 1 *Mal*, I. L. R., 1 All. 162; *contra* see All. 129.