

1884

RAMGHULAM
v
JANKI RAI.

Applying these principles to the present case, the decretal amount of Rs. 700 was a valid consideration, to that extent, of the deed upon which the suit from which this appeal has arisen was based. The findings of the lower appellate Court on the merits preclude us from considering any other question in second appeal, and I therefore agree with my brother Duthoit in dismissing this appeal with costs.

Appeal dismissed.

1884.
August 28.

CRIMINAL REVISIONAL.

Before Mr. Justice Duthoit.

JHINGURI v BACHU AND ANOTHER.

Criminal Procedure Code, ss. 435, 437—Power of District Magistrate to direct further inquiry by Magistrate of the first class—“Inferior Magistrate.”

Where a District Magistrate called for the record of a case in which a Magistrate of the first class had discharged certain accused persons, and directed another Magistrate of the first class to make further inquiry into the case, held, following *Nobin Kristo Mookerjee v. Russick Lall Laha* (1) and *Queen-Empress v. Nawab Jan* (2), that the District Magistrate's order was *ultra vires* and illegal.

THIS was a case referred to the High Court for orders, under s. 438 of the Criminal Procedure Code, by Mr. R. J. Leeds, Sessions Judge of Gorakhpur. On the 25th January, 1884, one Jhinguri preferred charges, under ss. 379, 427, and 447 of the Penal Code, against two persons named Bachu and Chutkan, in the Court of Munshi Chet Ram, Magistrate of the first class, Basti. After evidence had been taken on both sides, the case was dismissed by an order dated the 28th April, 1884.

On the 30th April an application, under s. 435 of the Criminal Procedure Code, was made to the Magistrate of the Basti District by the complainant, Jhinguri, and on the 29th May a further inquiry by another Magistrate of the first class was directed.

The Sessions Judge of Gorakhpur, in his report to the High Court under s. 438, recommended that the order of the Magistrate of the Basti District, directing further inquiry, should be set aside, on the ground, “*inter alia*,” that the Court of Munshi Chet Ram, a Magistrate of the first class, whose orders of conviction under the Penal Code were appealable to the Sessions Judge, was not, as

regards the particular case in question, "inferior" to the District Magistrate, within the meaning of s. 435 of the Criminal Procedure Code, and that therefore the District Magistrate had no authority either to call for the record or to direct further inquiry to be held.

The Court made the following order:—

DUTHOIT, J.—Munshi Chet Ram was, by Government Notification No. 724, dated the 30th May, 1882, appointed "to be Magistrate of the first class during such time as he acts as a Deputy Collector;" and, in answer to an inquiry on the subject, the Sessions Judge of Gorakhpur has reported that Munshi Chet Ram has continuously exercised those powers since the date of the Notification, and has not since ceased to officiate as a Deputy Collector.

Following and approving the view of the law taken by the learned Judges of the Calcutta Court in *Nobin Kristo Mookerjee v. Russick Lall Laha* (1) and in *Queen-Empress v. Nawab Jan* (2), I am of opinion that the order of the Magistrate of the Basti District, dated the 29th May, 1884, was *ultra vires* and illegal. I set it aside accordingly. Let the record be returned.

Before Mr. Justice Duthoit.

QUEEN-EMPRESS v. SINHA.

High Court's powers of revision—Criminal Procedure Code, s. 439—Revision of case in which term of imprisonment has been served.

The High Court is competent, in the exercise of its powers of revision under s. 439 of the Criminal Procedure Code, to interfere with a conviction, even though, in consequence of the expiry of the sentence, it may not be possible to interfere with the latter.

THIS was an application to the High Court for the exercise of its powers of revision under s. 439 of the Code of Criminal Procedure. The applicant had been convicted by a Magistrate of an offence under s. 26 of Act IV of 1879 (Indian Railway Act). The Court called for the record of the case, but before the application came on for hearing, the applicant had served the term of imprisonment to which he had been sentenced.

(1) I. L. R., 10 Calc. 268. (2) I. L. R., 10 Calc. 551.

1884

JHINGURI
v.
BACHU.

1884
October 24.