

MISCELLANEOUS CRIMINAL.

1897
January 14.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Blair and Mr. Justice Burkill.

QUEEN-EMPRESS v. MATA PRASAD AND OTHERS.

Criminal Procedure Code, sections 526, 192—Transfer of Criminal case by the High Court to the Court of a District Magistrate—Interpretation of order—Practice.

When a criminal case is transferred by an order of the High Court from a Court subordinate to a District Magistrate to the Court of a District Magistrate, if it is intended that the District Magistrate shall have power to transfer the case to a Subordinate Court, that intention will be expressed in the order of the High Court. If no such intention is expressed, it will be understood that, in the case of a transfer from a Court subordinate to a District Magistrate to a District Magistrate's Court, that District Magistrate's Court is expected to try the case itself; but, when the transfer is from the Court of one District Magistrate to the Court of another District Magistrate, it will be understood that, unless the contrary is directly expressed, the Magistrate of the Court to which the transfer is made has power and jurisdiction to apply section 192 of the Code of Criminal Procedure and to transfer the case to the Court of any Magistrate subordinate to him who may be competent to try it.

Prosecutions were instituted against Mata Prasad and others in the Court of a Magistrate subordinate in the District Magistrate of Mirzapur. On application to the High Court these cases were, by order of Blair, J., transferred to the Court of the District Magistrate of Allahabad. That order of transfer was worded in a general manner, and contained no direction that the District Magistrate should himself try the cases so transferred. The District Magistrate of Allahabad being unable, owing to press of work, to try the said cases himself, made them over, under the provisions of section 192 of the Code of Criminal Procedure, to the Joint Magistrate. There being some doubt under the circumstances whether it was intended that the District Magistrate of Allahabad should try the cases transferred to him himself, or whether he had power to act under section 192 of the Code of Criminal Procedure, an application was made by the Public Prosecutor for an order transferring the said cases specifically to the Court of the Joint Magistrate of Allahabad. This application being laid before a Bench the following orders were passed thereon:—

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The Public Prosecutor (Mr. *E. Chamier*) in support of the application.

EDGE, C. J.—This is an application for the transfer of certain cases pending in the Court of the District Magistrate of Allahabad to a Court subordinate to him. The cases in question were transferred by the order of this Court from an Assistant Magistrate subordinate to the District Magistrate of Mirzapur to the Court of the District Magistrate of Allahabad without any further direction being given in the order. Personally, I have always understood that, when the High Court made an order of transfer in a criminal case to the Court of a District Magistrate, it gives by that order full power to the Court of the District Magistrate to which the transfer was made to exercise the same jurisdiction precisely as the Magistrate of that Court could have exercised if the case had been instituted in his Court unless the contrary was expressed in the order of this Court. Cases may arise in which it is desirable that the case should be tried by the Magistrate of the District and not by a subordinate. In those cases, of course, if the High Court directs that the case is to be tried in the Court of the District Magistrate, the District Magistrate must try the case and cannot transfer it. Those cases are of rare occurrence, and it appears to me that it is highly undesirable to limit the discretion of the District Magistrate in the distribution of the work in his district, whether originally instituted in his district or transferred to his Court. The District Magistrate must know better than the High Court can what Magistrates of competent jurisdiction are most available for inquiry into any particular case. Speaking personally, I should have had no doubt that the District Magistrate of Allahabad was competent to make the order of transfer which he made in this case. When he took seizin of the case, it appears to me that the same power and jurisdiction devolved on him which he should have had if the case had been originally instituted in his Court and he had taken cognizance of it. Part of that power would have been to order the transfer of the case to any competent Court subordinate to his Court. It has been my practice, since I sat in this Court first, to include in my

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order words expressing that the District Magistrate, unless I otherwise intended, has power to transfer the case transferred to his Court to any Court subordinate to him that was competent. If I happened not to put those words in, I did not intend to limit what I conceive to be the powers of the District Magistrate to whose Court I transferred the case. But, when I made an order intending that on the transfer the case should be tried in a particular Court and not transferred, I have specially expressed in my order that the case should be tried by the particular Court to which I was transferring it. However, as there may be a difference of opinion on the question as to the meaning of an order drawn up as this order was in a case in which the transfer is from a Court subordinate to a District Magistrate to a District Magistrate's Court, the practice which we are prepared to follow in future will be that in such cases, if we intend that the District Magistrate should have power to transfer the case to a subordinate Court, that intention will be expressed in our order. If no such intention is expressed, it will be understood that, in the case of a transfer from a Court subordinate to a District Magistrate to a District Magistrate's Court, that District Magistrate's Court is expected to try the case itself; but, when the transfer is from the Court of one District Magistrate to the Court of another District Magistrate, it will be understood that, unless the contrary is directly expressed, the Magistrate of the Court to which the transfer is made has power and jurisdiction to apply section 192 of the Code of Criminal Procedure and to transfer the case to the Court of any Magistrate subordinate to him who may be competent to try it.

In the present case, as there has been a misunderstanding of the nature of the order, and to avoid any question in future as to the jurisdiction, we order notice to go to the respondents to show cause why the cases against them should not be transferred from the Court of the District Magistrate to the Court of Mr. Dupernex, the Joint Magistrate of Allahabad, and to his successor in that Court in case Mr. Dupernex ceases to be Joint Magistrate of Allahabad.

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BLAIR, J.—I assent to the order that notice go. The order for transfer was couched by me in the most general terms under the impression, which I still entertain, that an order so expressed transferred the case to the full and unlimited jurisdiction of the District Magistrate to whose Court it was transferred. Nothing was placed before me at the hearing of the case which would have led me to make a transfer of a more special and limited kind. But I think it of the highest importance that the practice of the Court in these matters should be uniform. I think the suggestion of the Chief Justice as to the course to be followed in future will save doubt and difficulty hereafter. I assent to the order proposed.

BURKITT, J.—I am of opinion that this application is quite unnecessary, but nevertheless I do not dissent from the order proposed, and to secure uniformity of practice in the Court I am willing in future to adopt the procedure suggested by the learned Chief Justice, though I confess I am unable to appreciate fully the distinction sought to be drawn between a case pending on the file of a District Magistrate and one on the file of a Subordinate Magistrate in the matter of transfer to another district. I would add that, both as a Judge of this Court and formerly as a District Magistrate, I was always under the impression, and acted upon that impression, that when a criminal case was transferred by the High Court from any Court in one district to another district that transfer in no way limited the jurisdiction of the District Magistrate to whom the case was transferred to act under the provisions of section 192 of the Code of Criminal Procedure. That opinion I still entertain, but, as I have already said, I am willing in future to adopt the practice suggested by the learned Chief Justice.

BY THE COURT.—Notice will go to the respondents in the manner indicated.

[On return of the notice, no cause being shown, an order was made on the 9th of February 1897, transferring the cases in question to the Court of the Joint Magistrate of Allahabad.]