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QUEEN-EMPRESS v. MUTASADDI LAL.

Queen-Empress v. *Mona Puna* (1), that the term "accused" means "a person over whom a Magistrate or other Court is exercising jurisdiction." The same view was held by the Calcutta High Court in *Jhoja Singh* v. *Queen-Empress* (2). I see no reason to put a different interpretation on the words "an accused person" in section 437. The District Magistrate was therefore competent to order further inquiry, and this application is not sustainable. I dismiss the application.

REVISIONAL CRIMINAL.

1898
August 25.

Before Mr. Justice Banerji.

QUEEN-EMPRESS v. ABDUL RAZZAK KHAN AND ANOTHER.*

Criminal Procedure Code, sections 190, 191—*Cognizance taken by Magistrate under section* 190, *sub-section* 1, *clause* (*c*)—*Jurisdiction of the Magistrate to hold preliminary inquiry not thereby ousted.*

Held that the fact of a Magistrate having taken cognizance of a case under section 190, sub-section 1, clause (*c*) of the Code of Criminal Procedure, does not disqualify such Magistrate from holding a preliminary inquiry and committing the case to the Court of Session.

IN this case a preliminary inquiry was pending before the District Magistrate of Mainpuri into a charge of offences under section 218 of the Indian Penal Code alleged to have been committed by one Abdul Razzak Khan, an Inspector of Police, and another. Previously to this inquiry the same Magistrate had made a departmental investigation into the charges against the accused, and had thus taken cognizance of the case under section 190 (1) clause (*c*) of the Code of Criminal Procedure. The accused accordingly under section 191 of the Code moved the District Magistrate to transfer the case to some other Magistrate. This the District Magistrate declined for various reasons to do, mainly, because the charge was exclusively triable by the Court of Session, and must necessarily

* Criminal Miscellaneous No. 87 of 1898.

(1) (1892) I. L. R., 16 Bom., 661. (2) (1896) I. L. R., 23 Calc., 493.

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be committed if any case against the accused were made out, and, if the transfer were to be granted as a matter of grace, the case was one which ought to be in the hands of the Magistrate of the District, and the other Magistrates to whom it was possible to transfer it were for one reason or another unsuitable.

Against the order of the District Magistrate rejecting their application for transfer, the accused applied in revision to the High Court, urging that the Magistrate having taken cognizance of the case under section 190 (1) clause (*c*), was thereby debarred from making a preliminary inquiry into it.

Mr. *B. E. O'Conor* and Kunwar *Parmanand* for the applicant.

BANERJI, J.—This is an application for the transfer to another Court of a criminal case now pending in the Court of the District Magistrate of Mainpuri. The application purports to be made under sections 191 and 526 of the Code of Criminal Procedure. The case is one exclusively triable by a Court of Session, so that the Magistrate is only holding a preliminary inquiry into the matter. It appears that he has taken cognizance of the case under sub-section 1, clause (*c*) of section 190, and it is urged that, that being so, the Magistrate is not competent to hold a preliminary inquiry in this case, having regard to the provisions of section 191. I am unable to agree with this contention. In my opinion that section does not disqualify a Magistrate who has jurisdiction even to try the case from holding a preliminary inquiry. What that section provides is that if a Magistrate takes cognizance of an offence under sub-section 1, clause (*c*) of section 190, and if, before any evidence is taken, the accused objects to being tried by such Magistrate, he may either transfer the case to another Magistrate or commit the case to the Court of Session. He is thus empowered to make a commitment in a case within his cognizance. He cannot make a commitment without holding a preliminary inquiry, so that the section distinctly empowers him to hold a preliminary inquiry even in cases triable by him-

self. It necessarily follows that he is competent to hold a preliminary inquiry in cases exclusively triable by a Court of Session. In this case it has not been satisfactorily shown that there is a sufficient reason under section 526 of the Code of Criminal Procedure to transfer the preliminary inquiry to some other Court. It is desirable that the inquiry should be held by an officer holding the position of the District Magistrate, and there is no reason to assume that the District Magistrate of Mainpuri will not make his inquiry with an open mind. I dismiss the application and withdraw the order for stay of proceedings.

APPELLATE CRIMINAL.

1898.
September 7.

Before Mr. Justice Banerji.

QUEEN-EMPRESS *v.* JEOCHI.*

Criminal Procedure Code, section 288—*Evidence—Use in Sessions Court of evidence taken before the Committing Magistrate.*

Although under certain circumstances a Court of Session may use evidence given before the Committing Magistrate as if it had been given before itself, it is not proper for a Court of Session to base a conviction solely upon such evidence, there being no other evidence on the record to corroborate it. *The Queen* v. *Amanulla* (1), *Queen-Empress* v. *Bharamappa* (2) and *Queen-Empress* v. *Dhan Sahai* (3), referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu *Satya Chandar Mukerji* for the appellant.

The Government Pleader (Munshi *Ram Prasad*) for the Crown.

BANERJI, J.—The appellant, Musammat Jeochi, was charged with having torn off an earring from the ear of a boy named Muneshar, and has been convicted under section 394 of the Indian Penal Code. The evidence adduced in the Court of Session did not at all prove the guilt of the appellant. On the contrary,

* Criminal Appeal No. 793 of 1898.

(1) (1874) 12 B. L. R. App., 15. (2) (1888) I. L. R. 12 Mad., 123.
(3) (1885) I. L. R., 7 All., 862.