

CRIMINAL MOTION.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Ghose.

IN THE MATTER OF THE PETITION OF CHANDI SINGH AND OTHERS.

QUEEN-EMPRESS *v.* CHANDI SINGH AND OTHERS.*

1887
April 2.

Criminal Procedure Code (Act X of 1882), ss. 233, 234, 537—Separate charges for distinct offences.

Five persons were charged with having committed the offence of rioting on the 5th December; four out of those persons, and one *F*, were charged with having committed the offence of criminal trespass on the 9th December. These two cases were taken up and tried together in one trial, and were decided by one judgment.

Held that the trial was illegal, and the defect was not cured by s. 537 of the Criminal Procedure Code.

On the 10th and 11th December two cases were sent up to the Magistrate by the Dalsing Serai Police. In the first of these Chandī Singh, Ferangi Singh, Batoram Singh, Bachu Singh and Bhagwan Singh were charged under s. 147 of the Penal Code with having committed, on the 5th December, the offence of rioting on a piece of land belonging to the Mow Factory. In the second case Ferangi Singh, Batoram Singh, Bachu Singh and Bhagwan Singh were charged under s. 447 of the Penal Code with committing, on the 9th December, criminal trespass on the same piece of land. These two cases were tried together in one trial by the District Magistrate of Durbhanga, and passing one judgment in the two cases he convicted and sentenced the accused named in the first mentioned case, each to two years' rigorous imprisonment, and further sentenced the accused in the secondly mentioned case to undergo a further imprisonment of three months for the offence committed under s. 447 of the Penal Code. The prisoners appealed to the Sessions Judge, who summarily rejected their appeal under s. 421, stating that the trial had been rightly held under s. 234 of the Criminal Procedure Code. The prisoner moved the High Court to have the conviction set

* Criminal Motion No. 55 of 1887, against the order passed by A. C. Brett, Esq., Sessions Judge of Tirhoot, dated the 7th of February, 1887, affirming the order passed by J. C. Price, Esq., Magistrate of Durbhanga, dated the 8th of January, 1887.

1887
 QUEEN
 EMPRESS
 v.
 CHANDI
 SINGH.

aside, and obtained a rule calling upon the other side to show cause why the convictions should not be set aside.

Mr. *Gregory* and Baboo *Ram Charan Miller* showed cause.

Mr. *M. P. Gasper* in support of the rule.

The order of the Court (PETHERAM, C.J., and GHOSE, J.) was delivered by

PETHERAM, C.J.—We think that this rule must be made absolute and made absolute on the legal ground alone. With reference to the merits of the case they have not been gone into, and therefore this Court is not in a position to form any judgment whatever, but the ground upon which we base our judgment is that these two charges have been tried in one trial, and that is an illegal proceeding under s. 233 of the Code of Criminal Procedure.

The charges were, first of all, a charge against five men of having committed a riot on the 5th December, 1886, and against four out of the five men of having committed criminal trespass on the 9th December, 1886. These two charges were tried together in one trial and were decided by one judgment.

In our opinion this proceeding was illegal within the terms of s. 233, and does not, as the Judge supposes, come within the terms of s. 234. The only matter which is common to both charges is that the dispute in each case arises out of the same land, but the charges are absolutely distinct, and the persons charged are not the same body of men. It is quite true that there were some of the persons common to both charges, but the second charge did not include all the persons charged under the first charge.

Under these circumstances we think that the trial was illegal, it having been a trial which is prohibited by the terms of the law as contained in s. 233, and we do not think that s. 537, which cures errors, omissions or irregularities, is intended to cure, or does cure, an absolute illegality. For these reasons we set aside the trial and the conviction, and direct that the prisoners be discharged from custody.

T. A. P.

Rule absolute.