1889

KEDARNATH DAS v. MOHESH CHUNDER CHUCKERBUTTY.

whether the application has been properly granted or not. It is therefore incumbent upon the Subordinate Courts so to frame the proceedings before them as to satisfy this Court as a Court of revision. In the present case we have absolutely nothing before us except the judgment of the Magistrate recording that the charge preferred by the petitioner Kedarnath was not proved. Now, the fact that that charge was not proved was in itself no sufficient ground for granting the accused in that case permission to prosecute the complainant with having intentionally and falsely charged him with such offence. Under such circumstances, we think that there were no sufficient grounds for granting the sanction to prosecute the petitioner, and that that order should accordingly be revoked.

H. T. H. *Rule made absolute.*

Before Mr. Justice Trevelyan and Mr. Justice Beverley.

1889
May 20.

IN THE MATTER OF BICHITRANUND DASS AND OTHERS (PETITIONERS) *v.* BHUGBUT PERAI (OPPOSITE PARTY).

IN THE MATTER OF BICHITRANUND DASS AND OTHERS (PETITIONERS) *v.* DUKHAI JANA (OPPOSITE PARTY).*

Jurisdiction of Criminal Court—Tributary Mehals—Kheonjur—"Local Area"—Code of Criminal Procedure (Act X of 1882) ss. 182 *and* 531.

The Penal Code and Criminal Procedure Code have no application to the Tributary Mehal of Kheonjur which is on precisely the same footing in that respect as Mohurbhunj.

Certain persons, officers of the Maharajah of Kheonjur, one of whom was a resident of the Cuttack district, and the others residents of Kheonjur, were charged before the Deputy Magistrate of Tajpore with certain offences under the Penal Code. They were convicted, and on appeal to the Sessions Judge, the conviction was upheld. It was found by the Sessions Judge that the scene of the occurrence which gave rise to the charges was within the Territory of Kheonjur.

Held, that the Deputy Magistrate and Sessions Judge had no jurisdiction to try the case, and that the conviction must be set aside.

* Criminal Motions Nos. 4 and 6 of 1889 against the order passed by J. B. Worgan, Esquire, Sessions Judge of Cuttack, dated the 27th of September 1888, modifying the order passed by J. S. Davidson, Esquire, Deputy Magistrate of Tajpore, dated the 6th of February 1888.

1889

IN THE MATTER OF BICHITRANUND DASS v. BHUGBUT PERAI.

Held, further, that ss. 182 and 531 of the Criminal Procedure Code had no application to the case.

The words "local area" used in s. 182 only apply to a "local area" over which the Criminal Proeedure Code applies, and not to a local area in a foreign country or in other portions of the British Empire to which the Code has no application; and similarly s. 531 only refers to districts, divisions, sub-divisions and local areas governed by the Code of Criminal Procedure.

THE only question raised at the hearing of these two rules was whether the Deputy Magistrate of Tajpore and the Sessions Judge of Cuttack had jurisdiction to try the accused for offences which were alleged and found by the Sessions Judge to have been committed in Kheonjur, a tributary mehal adjoining the district of Cuttack.

The facts of the two cases were practically identical, the principal accused person in both cases being Bichitranund Dass, one of the officers of the Maharajah of Kheonjur, and it is sufficient for the purpose of this report to state the facts which gave rise to the issue of the rule in the latter of the two motions.

The prosecution alleged that Bichitranund Dass, who was the peshkar of Anundpore, accompanied by the other accused, all servants of the Maharajah of Kheonjur, came with a large number of men on to lands situate in Sukinda, which is within the district of Cuttack and within the jurisdiction of the Sub-divisional Magistrate of Tajpore, and proceeded to break *mokha* from the *baris* of Dukhai Jana and others, to cut dhan on the lands, and also to cut a *dhandi* which served as a boundary or line of demarcation between Sukinda and Kheonjur. Thereupon certain men of Sukinda came up and protested against the trespass, and this resulted in some nine of the latter being seized by Bichitranund and the other accused and taken off to Anundpore in Kheonjur when they were taken before the Manager. That official sent them down to be tried by the Sub-divisional Magistrate of Tajpore by whom they were discharged. It was alleged by the Sukinda people that they were cutting their *sua* crops on their own land and that their crops were carried off by the Kheonjur party.

After the nine men had been discharged, a complaint was made before the Deputy Magistrate of Tajpore against Bichitranund and the others charging them with offences under

1889

IN THE MATTER OF BICHITRANUND DASS v. BRUGBUT PERAI.

ss. 147 and 342 of the Penal Code. The principal question raised in the case was whether the scene of the occurrence was situate within Sukinda or Kheonjur, and on behalf of the accused it was contended that, as the occurrence took place in Kheonjur, the Court had no jurisdiction to try them. The Deputy Magistrate found that Bichitranund, being a resident of Sukinda, and therefore a British subject, was liable to be tried by him, whether the occurrence took place in Kheonjur or not.

Upon the principal question he found that the *sua* lands claimed by the Sukinda people were actually in their possession and formed part of Sukinda; that the accused entered upon their lands with intent to deprive the Sukinda people of them; that they also entered the *baris* of Dukhai Jana and others and committed certain acts of violence therein, such as trampling down the hedges, breaking the *mokha* crops, and cutting the *dhandi*; and that they arrested nine Sukinda men within the limits of Mulasar Mouza in Sukinda and therefore in British territory.

Upon these findings he convicted the accused of offences under ss. 147 and 342 of the Penal Code and fined Bichitranund Dass Rs. 300, Karmokar Patnaik Rs. 100, and the other accused Rs. 20 each with an alternative of one month's rigorous imprisonment each. He further directed all the accused to execute bonds in various sums to keep the peace for a period of three years.

Against that conviction Bichitranund Dass and Karmokar Patnaik appealed to the Sessions Judge, who upheld the conviction but reduced the amount of the fines.

The material portion of the judgment of the Sessions Judge was as follows:—

"The facts of this case are fully stated in the judgment of the lower Court. The allegation of the prosecution is that the riot was committed in the "*baris*" or homesteads of certain ryots in Mouza Mulasar in Sukinda, in the jurisdiction of the Sub-divisional Magistrate of Tajpore in the district of Cuttack, by the appellants and others, of whom the appellant Bichitranund is a man of the Cuttack district, whilst the appellant Karmokar is a man of the Kheonjur territory.

1889

IN THE MATTER OF BICHITRANUND DASS v. BHUGBUT PERAI.

The wrongful confinement or seizure of the complainant and his companions is also alleged to have occurred in or close to the said *baris*. About this the Deputy Magistrate was not satisfied, he being of opinion that the arrests were made on the *sua* lands, the cutting of the crops on which led to the same. From these lands he thought the Mulasar men were taken by the appellants to the "Gat" or cattle-fold near the *baris*. He did not pass separate sentences for the riot and the wrongful confinement, but for the two offences jointly. * * * * The case for the appellants is that they were not present, but Bichitranund says that the *sua* lands are not in Mulasar but in Chanchaniapal, a mouza in Kheonjur, adjoining Mulasar, and the arrest was admitted by certain of his co-accused in the case on that ground, it being their allegati on that it was effected on the *sua* lands, the distance of which from the *baris* is stated to be a quarter of a mile or something less. The exact position of these fields might, I think, have been with advantage ascertained and shown on a sketch-map, it being a matter of importance to know their distance from the *busti* of Mulasar, as well as from the nearest *busti* in the Mouza Chanchaniapal." [The Judge then proceeded to go into the geographical position of the *sua* lands and other facts immaterial for the purpose of this report, and came to the conclusion that it had not been proved by the prosecution that the *sua* lands were in Sukinda.] He then continued :—

"We are now brought to the other part of the case, *viz.*, the seizure in the *sua* fields, and to the question of jurisdiction, the first point being whether the Penal Code is or is not applicable to the case. It was said for the appellants it is not, because Kheonjur is not in British India. It was said for the prosecution that this statement is incorrect and that Kheonjur is not out of British India, it being under Regulation XII of 1805 a part of Zillah Cuttack. Reference was made for the prosecution to the cases of *Hursee Mohapatro* v. *Dinobundo Patro* (1), and *The Empress* v. *Keshub Mohajan* (2), the latter being a Full Bench case deciding that Mohurbunj is not in British India. The question of the other Tributary mehals being or not being in British India was not settled by that case, special features being found in respect

(1) I. L. R., 7 Cal., 523. (2) I. L. R., 8 Cal., 985.

of Mohurbunj. The view taken on the general question would, I think, not support a finding that the Tributary mehals are not within the limits of British India, and I shall proceed on the view that they are within those limits, and that Kheonjur is so situated and thus is not to be regarded as a foreign state under the Extradition Act of 1879. At the same time, I do not consider that the Penal Code can be held to be in force in Kheonjur, inasmuch as the exemption thereof from the Regulation Criminal Law given to this mehal by Regulation XIII of 1805 was not annulled by the Penal Code. What law is in force in Kheonjur does not appear. Criminal jurisdiction is exercised by the Superintendent as a Sessions Judge, and by the Magistrates of Cuttack, Balasore, and Puri, as Assistant Superintendents; and in a Mohurbunj case tried by me at the May Sessions at Balasore, it was stated that the spirit of the Codes was followed in Mohurbunj, and this is no doubt true of the other Tributary mehals.

"Taking it that if the arrest occurred at a place in which the Penal Code, and equally the Criminal Procedure Code, were not in force, the question of jurisdiction demands settlement, it will be well to see how the matter of *venue* stands. If the *sua* fields be held to be in Sukinda, both of the appellants were, and are, liable under s. 2 of the Penal Code. All that the one of them who belongs to Kheonjur could claim might be to make an objection as to the matter of his arrest by calling himself a subject of a foreign state but as I have already held Kheonjur not to be a foreign state, no plea of this kind can be entertained. The question is thus only whether Mr. Davidson's decision in the matter of *venue* was justified. It was said for the appellants that it was not, as he made no attempt to re-lay the boundary line as shown by the map to which his decision may very possibly be contrary, and that in acting as he did he assumed a power which is by law vested in the Superintendent and no one else, *viz.*, by Act XX of 1850. I have already shown that the dispute would appear to have involved a very nice question as regards position, and I think myself that this question demanded a more accurate method of determination than that which was adopted by Mr. Davidson, which seems to have left the point

1889

IN THE MATTER OF BICHITRANUND DASS v. BHUGBUT PERAI.

in doubt. The fact of the Mulasar men having held the fields would not give the Deputy Magistrate jurisdiction and was hardly relevant to the issue, the position of the lands being one to offer temptation for encroachment. I think that it was a matter in which the onus was on the prosecution and that it was not met. I do not think that I can properly uphold the finding that the *sua* fields are within Sukinda and not in Kheonjur. The point is open to doubt, and of this doubt I think the appellants can claim the benefit.

"It being now held that the scene of the arrests was not proved to be in Sukinda, and that if in Kheonjur, it was in a place not under the operation of the Penal Code, though in British India, the question is how did Mr. Davidson's jurisdiction stand? As regards the Kheonjur appellant Karmokar Patnaik, I do not think that he is, under the view taken by me, differently placed from the other appellant, who is a man of Cuttack. If Kheonjur is in British India, he is as much a native Indian subject of Her Majesty as is Bichitranund. It cannot however be said that s. 188 of the Criminal Procedure Code would apply, nor was it contended. Section 531 was the section on which (with s. 182) the prosecution relies as making the conviction legally sound; and it was urged that the case was one capable of inquiry and trial within either the local area of Sukinda, *i.e.*, Tajpore or of Kheonjur, the latter of which is, it was said, a Sessions division existing at the time of the passing of the present Criminal Procedure Code. Under s. 182, if it was uncertain in which of the areas the offences were committed, it was, it was argued, open to the prosecution to proceed in either the Tajpore Magistrate's or in the Superintendent's Court, and either Court could enquire into and try the case. Against this it was said that Kheonjur cannot be considered to be a 'local area' within the meaning of the Code, and that the alternative procedure was thus not open as contended.

"As to this matter, I do not find any definition of the phrase local area' in the law. The point came before me for consideration in the Mohurbunj trial alluded to, and the view that I then took of it was that 'local areas' meant areas within British India. It was said that they are not this, but areas within

which the Criminal Codes are in force, and as the Penal Code is not in force in Kheonjur it cannot be held to be a local area. I was not shown any authority for this restricted view of the words 'local area,' and I should not in the absence thereof be disposed to alter the view adopted before. I think that the law is not contravened thereby.

"I thus think that Mr. Davidson was not without jurisdiction as regards either of the appellants, as respects what they are alleged to have done at the *sua* fields, and that as he had jurisdiction he was justified in applying the Penal Code.

"I have not said anything as to the objection of Mr. Davidson's re-laying or defining the boundary being, as alleged, *ultra vires* or not, because on the view taken by me this point of law need not be gone into. My attention was drawn by Baboo H. B. Bose to a judgment of Mr. Macpherson of the 23rd of May 1877 in R. A. No. 116 of 1875, *Bamadev Bhramachari* v. *Dasrathi Nack*, showing that it was held by him that a Civil Court could not settle its own jurisdiction against a Tributary mehal, and I should doubt whether a Magistrate could do so any more. But if s. 182 applies, the Deputy Magistrate's action in this respect is of no importance as regards the conviction.

"I may say that even if the *sua* fields were in Kheonjur, I consider it could not be held that there was no offence, if the application of the Penal Code was legal. The right of private defence would not justify what the appellants did.

"An objection was made that a request made for recall of the witnesses for further cross-examination on the 19th of December was disallowed, as also a repetition of the request made on the 9th of January. Looking at the cross-examination which had preceded this petition, and the nature of the evidence, which indicated clearly enough the charge which was made after it was concluded, I do not think that the Deputy Magistrate was wrong in refusing the application, and I do not think that anything could be gained by a remand now. I should thus not interfere on this ground. The conviction is accordingly upheld, as also the order for security, and the appeal to this extent dismissed. In view however of the uncertainty of the

1889

IN THE MATTER OF BICHITRANUND DASS v. BHUGBUT PERAI.

real position of the land, I think the sentence is capable of mitigation, and I reduce it in the case of appellant Bichitranund to Rs. 200, and of Karmokar to Rs. 60 fine, in default the term of imprisonment to be as ordered by the lower Court."

Against the order of the Sessions Judge, the petitioners moved the High Court, and a rule was issued which now came on for hearing.

Baboo *Mohesh Chandra Chowdhry*, Baboo *Umbica Churn Bose*, Baboo *Abinash Chandra Banerjee* and Baboo *Karuna Sindhu Mukerjee* for the petitioners.

The *Deputy Legal Remembrancer* (Mr. *Kilby*) for the Crown.

The application was based on a petition setting out the above facts, and the principal grounds upon which it was contended that the decisions of the lower Courts were erroneous and the conviction bad were as follows :—

1. That the Courts below were wrong in holding that the territory of Kheonjur, which is a Tributary state, formed part of British India.

2. That the Sessions Judge ought to have held that the order of the Deputy Magistrate was liable to be quashed for want of jurisdiction.

3. That the Sessions Judge was wrong in holding that under s. 182 of the Criminal Procedure Code, the Deputy Magistrate of Tajpore had jurisdiction to try the case even if the "*sua* land" were held to be within the territory of Kheonjur.

4. That the interpretation put upon the phrase "local area" in s. 182 of the Criminal Procedure Code by the lower Court was not correct, and that that section had no application to the case.

5. That the Sessions Judge ought to have held that the Deputy Magistrate had not the power to assume jurisdiction against a tributary mehal.

6. For that the *sua* lands having been found to be situate within the Kheonjur state, and that the complainant and the people of Sukinda were taking crops from the said land, the

Court below ought to have held that the petitioners were justified in arresting the trespassers and taking them to the Sub-divisional Officer, and that there was no offence within the meaning of s. 342 or under s. 379 of the Penal Code.

The judgment of the High Court (TREVELYAN and BEVERLEY, JJ.) was as follows :—

In this case we think it clear that the conviction cannot stand. The alleged offence was unquestionably and admittedly, if it was committed at all, committed within Kheonjur. Now there seems to be no question that Kheonjur and Mohurbunj are tributary mehals standing exactly upon the same footing with regard to their relations with the British Government and their independence. This is apparent from the treaty engagements executed by the Rajahs of these respective territories which are set out at pages 184 to 187 of the 1st volume of Aitchison's Treaties. A comparison of these two engagements shows that they are practically identical in terms, and the learned counsel who appears for the Crown has not disputed that proposition. Now this place Kheonjur being in this respect the same as Mohurbunj, we have to consider the effect of the Full Bench case *The Empress* v. *Keshub Mohajan* (1), and the cases that gave rise to that reference to the Full Bench. There is no doubt of this, that the result of the Full Bench case and the other cases is this, that whether Mohurbunj was a foreign territory or not, the Criminal Procedure Code and the Penal Code had no application to it. It therefore follows by parity of reasoning that in the case of Kheonjur these Codes have no application. This proposition also was not disputed by Mr. Kilby who appears for the Crown. Mr. Kilby very properly pointed out his position, and told us that he found it was impossible to support the judgment in the face of these considerations. That being so, and these Codes not applying, it follows that the Magistrate before whom this case first came for decision, and the Sessions Judge to whom an appeal was made from the decision of the Magistrate, had no jurisdiction to try the case. It follows also that the Sessions Judge was wrong in his judgment where he considered that s. 182 of the Criminal Procedure Code applied. That section clearly does not

(1) I. L. R., 8 Cal., 985.

1889

IN THE MATTER OF BICHITRA-NUND DASS v. BHUGBUT PERAL.

apply for two reasons. In the first place the words "local area" in that section must mean a local area over which this particular Code applies, and it would not refer to a local area in a foreign country, or in a portion of the British Empire to which this Code has no application. The whole purport of the section makes that clear. Then again that section in reality intends to provide for the difficulty which would arise where there is a conflict between different areas, in order to prevent an accused person getting off entirely, because there may be some doubt as to what particular Magistrate has jurisdiction to try the case. Each portion of the section refers to this conflict. The Sessions Judge finds as a fact that this particular offence was committed in this local area of Kheonjur, and it is impossible to find from his judgment with what other local area that local area in Kheonjur conflicts. For this reason also s. 182 has no application to the present case. The other section to which the Sessions Judge refers, *viz.*, s. 531, is equally inapplicable. That section, of course, only refers to districts, divisions, sub-divisions and local areas governed by the Code of Criminal Procedure, and for similar reasons it does not apply. In our opinion the place where the offence is said to have been committed was not within the jurisdiction of the Magistrate or of the Sessions Judge.

For these reasons we think it is quite clear that the judgment is wrong. We set aside the convictions and direct that the fines, if realised, be refunded.

H. T. H. *Rule made absolute and conviction quashed.*