

1911

AMINA
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THE NAWAB
OF RAMPUR.

We think that there is no force in the fifth ground of appeal. The second, third and fourth grounds of appeal were not pressed.

For the foregoing reasons the plaintiff is in our judgement entitled to hold the decree which he has obtained. We accordingly dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

1911
April, 22.

Before the Hon'ble Mr. H. G. Richards, Chief Justice, and Mr. Justice Tudball.
EMPEROR v. MAHABIK AND OTHERS.*

Jurisdiction—Offence committed in British India—Appeal from conviction—Transfer pending appeal of place where offence was committed to a native state.

An offence was committed within British India. Certain persons were convicted thereof and appealed against their conviction to the appropriate court in British India. Pending the hearing of their appeal, however, the place when the offence had been committed was constituted part of an independent native State. Held that this subsequent transfer of territory did not deprive the court in which the appeal had been filed of its jurisdiction to hear it.

In this case three persons had been convicted and sentenced under section 325, of the Indian Penal Code, by a Magistrate of the Mirzapur district. They appealed against their convictions and sentences to the Sessions Judge of Mirzapur. Pending the appeal, however, the place where the offences had been committed, which had been at the time British territory, was transferred to the newly-created State of Benares. The Sessions Judge therefore returned the memorandum of appeal to be presented to the proper court of that State. Against this order the appellants applied in revision to the High Court.

Mr. *E. A. Howard*, for the applicants.

No one appeared for the Crown.

RICHARDS, C. J. and TUDBALL, J. :—The facts of the matter out of which this application in revision has arisen are shortly as follows :—The three applicants were charged under section 325, Indian Penal Code. Applicants Nos, 1 and 3 were sentenced to

* Criminal Revision No. 148 of 1911, from an order of W. R. G. Moir, Sessions Judge of Mirzapur, dated the 8th of April, 1911.

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two years' rigorous imprisonment and Rs. 100 fine, and applicant No. 2 to one year's rigorous imprisonment. The particular place where the offence was alleged to have been committed was then in British India, but by virtue of a notification of the Government of India certain territory, including the place where the alleged offence was committed, has been constituted an independent native state. The applicants appealed from the conviction to the learned Sessions Judge prior to the constitution of the native state, as already mentioned. Before, however, the appeal came on for hearing, the transfer of the territory had been actually carried into effect. The learned Sessions Judge, thereupon, by an order, dated the 8th April, 1911, returned the memorandum of appeal to the applicants for presentation in the proper court in the Benares State, holding that in the events that had happened, he had no jurisdiction to entertain the appeal. The present application is for the revision of this order. In our opinion the learned Sessions Judge is wrong. The offence was committed in British India, the appeal was presented to the proper court, the appellants are at present confined in a jail in British India. Under these circumstances we consider that the learned Sessions Judge had jurisdiction to entertain the appeal. The learned Sessions Judge says, "it" (that is, the Court of Sessions Judge of Mirzapur) "is no longer a court of appeal for which persons convicted of offences committed outside British India can ordinarily come." The learned Sessions Judge has overlooked the fact that the alleged offence in the present case was committed in British India. We do not think that the mere fact that the particular locality has ceased to be British India before the appeal has been determined, takes away the jurisdiction of the learned Sessions Judge. We accordingly allow the application, and set aside the order of the learned Sessions Judge with directions to re-admit the appeal and proceed to hear the same.

Application allowed.