

REVISIONAL CRIMINAL.

1914
May, 19.

Before Justice Sir George Knox.

BAL KISHAN v. SIPAHI LAL AND OTHERS*

Criminal Procedure Code, section 17—District Magistrate—Powers of Magistrate of the district as regards distribution of criminal work—Delegation.

Held that section 17 of the Code of Criminal Procedure does not empower a district magistrate to delegate to the senior honorary magistrate of the district the duty of distributing cases for disposal amongst the other honorary magistrates and benches.

THIS was a case called for by the High Court on perusal of the quarterly statement of the Pilibhit district. The case was instituted in the court of Pandit Bishambhar Nath. He transferred it to a bench of honorary magistrates. On the 17th of April, 1913, the case seems to have come before Raja Lalta Prasad, where it remained until the 17th of May, 1913. From his court it then went to a bench of magistrates, but apparently without any formal order transferring the case. On being called upon by the High Court for an explanation as to the various transfers, the District Magistrate explained that the case had been transferred to the court of Raja Lalta Prasad by the senior honorary magistrate Shaikh Abdul Rahman "who has been authorized to distribute cases among the honorary magistrates," and that as Raja Lalta Prasad had gone on leave the case had been taken up by the remaining member of the bench and thereafter transferred to a bench of magistrates by order of Pandit Bisheswar Nath Kak in the capacity of sub-divisional magistrate.

KNOX, J.—The case was one in which the offence charged was an offence under section 323 of the Indian Penal Code. It was transferred from one court to another until it had come under the cognizance of no less than four different courts and even now it does not appear clear under what orders the case passed from one to another of these several courts. There appears to be a custom in Pilibhit under which all cases entrusted to a bench of magistrates are put before the senior honorary magistrate in order that he may make a proper distribution of the work and the authority for this practice is based upon section 17 of the Code of Criminal Procedure. Section 17 empowers a

* Criminal Revision No. 1032 of 1913.

District Magistrate to make rules or give special orders consistent with the Code as to the distribution of work among such magistrates and benches. Now distribution of work is one thing, calling up a case from the court to which it is transferred for trial is quite different, and I cannot find that the Code anywhere empowers the district magistrate to pass on his powers of calling up cases from subordinate courts and redistributing them. Such a practice, even if governed by a special order, would not appear to be consistent with the Code and the mischief from such a practice appears when a simple case of this kind is handed about from court to court.

The distribution of business is, so far as I can ascertain, confined to district magistrates and cannot be exercised by a magistrate in charge of a sub-division.

The order of the magistrate directing that the senior honorary magistrate should distribute work among the other honorary magistrates is an order *ultra vires* and some other arrangement for distribution of work than this should be made; otherwise there is a risk of a case transferred by a senior honorary magistrate being declared null and void *ab initio*, being a trial without jurisdiction. Let the record be returned.

Record returned.

APPELLATE CIVIL.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

MATA PRASAD (APPLICANT) *v.* BARAN BARHAI (PROSECUTOR-PARTY)*.

Criminal Procedure Code, section 195—Sanction to prosecute—Id., et c.

Held that when sanction to prosecute has been granted or refused by a court under the provisions of section 195 of the Code of Criminal Procedure, only one appeal from such order will lie under that section. *Kanhai Lal v. Chhadammi Lal* (1) followed. *Muthuswami Mudali v. Veeni Chetti* (2) referred to

ONE Mata Prasad applied in the court of the Munsif of Gorakhpur for sanction to prosecute Baran Barhai, but sanction was refused. He then made a further application under clause

* First Appeal No. 5 of 1914 from an order of W. R. G. Mair, District Judge of Gorakhpur, dated the 17th of November, 1913.

(1) (1908) I. L. R., 31 All., 48.

(2) (1907) I. L. R., 30 Mad., 382.

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