

## REVISIONAL CRIMINAL.

Before Mr. Justice Dalal.

EMPEROR v. BANARSI DAS AND ANOTHER.\*

1928  
Novem-  
ber, 19.

*Criminal Procedure Code, sections 443, 446—Complaint by Indian against an European and some Indians jointly in a warrant case—Magistrate holding chapter XXXIII applicable—Section 446 mandatory—Jurisdiction—Magistrate cannot try the Indians after discharging the European.*

Where a Magistrate decided under section 443 of the Code of Criminal Procedure that a case ought to be tried under the provisions of chapter XXXIII, and the case, in which an European and some Indians were the co-accused, was a warrant case, and subsequently the Magistrate discharged the European accused, apparently on insufficient grounds, and proceeded to take up the case against the Indians: *Held*, the provisions of section 446 of the Code are mandatory and a Magistrate, after once deciding under section 443 that chapter XXXIII is to apply, cannot assume jurisdiction to try the case by discharging the European accused; he must, if he does not discharge the Indian accused persons under section 209 or section 253, commit them for trial to the court of sessions.

THE facts of the case appear from the judgement of the Court.

Babu *Sailanath Mukerji* and Pandit *Rama Kant Malaviya*, for the applicants.

The Government Advocate (Pandit *Uma Shankar Bajpai*), for the Crown.

DALAL, J. :—An Indian, a police constable, was complainant in this case and one of the accused was a European of the name of Mr. Marshall. In the first complaint Mr. Marshall was made the principal offender. On an application by him the Magistrate recorded a

\* Criminal Revision No. 801 of 1928, from an order of A. Monroe, District Magistrate of Cawnpore, dated the 27th of September, 1928.

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finding under section 443 (1) of the Code of Criminal Procedure that the case was one which ought to be tried under the provisions of chapter XXXIII. Subsequently the Magistrate, by an exceedingly summary order, discharged Mr. Marshall on the 18th of September, and assumed jurisdiction himself to try the Indians who were prosecuted along with Mr. Marshall. Under section 446 of the Code of Criminal Procedure, where a Magistrate decides under section 443 that a case ought to be tried under the provisions of chapter XXXIII, and the case is a warrant case, the Magistrate inquiring into the case shall, if he does not discharge the accused under section 209 or section 253, commit the case for trial to the court of sessions, whether the case is or is not exclusively triable by that court. The provisions of that section are mandatory and a Magistrate, after once deciding that he had no jurisdiction, cannot assume jurisdiction by discharging the European British subject. In the present case it is obvious to me that the discharge was made in order to assume jurisdiction. [The judgement then referred to certain facts and continued.]

The order discharging Mr. Marshall is not before me for revision, but I mention these facts to indicate that the Magistrate has gone out of his way to assume jurisdiction by discharging Mr. Marshall on insufficient grounds. I do not think that the wording of section 446 permits of such an assumption of jurisdiction. The Magistrate is empowered only to hold an inquiry in this case and if he does not discharge the Indian applicants, Banarsi Das, Ram Chandra, Sukh Lal, Jugal Kishore and Joti Swarup, he is bound to commit them to the court of sessions and he is hereby directed to do so if he does not discharge them.