

1931

SRI THAKUR
RAMKRISHNA
MURAJI
v.
RATAN
CHAND.

For these reasons their Lordships are of opinion that the appeal must be allowed, the decree of the High Court set aside, and the decree of the Subordinate Judge restored. The plaintiff respondent must pay the costs of the defendant appellant, both of this appeal and of the appeal to the High Court. Their Lordships will humbly advise His Majesty accordingly.

Solicitor for appellant: *H. S. L. Polak.*

REVISIONAL CRIMINAL

Before Mr. Justice King.

EMPEROR v. AMBIKA PRASAD*

1930

August, 2.

Criminal Procedure Code, section 254—Indian Penal Code, sections 186 and 353—Trial begun as warrant case in respect of both offences—Graver offence not substantiated—Trial continued as summons case for the minor offence only—Framing a charge unnecessary—Effect of omission—No failure of justice.

A person was accused of offences under sections 186 and 353 of the Indian Penal Code for obstructing and assaulting a kurk amin in the discharge of his duty. The trial was begun as that of a warrant case, but after the two principal witnesses, the amin and the decree-holder, had been examined and cross-examined, the Magistrate found that the evidence did not support a conviction under section 353, and ordered that the trial should proceed as that of a summons case in respect of the offence under section 186 only; no charge was framed. The accused was convicted and sentenced under section 186. On the contention that a charge should have been framed under that section and the accused thus given a second opportunity to cross-examine the amin,—

Held that as the Magistrate was of opinion that no offence which was triable under chapter XXI of the Criminal Procedure Code had been established, he was not required by section 254 of that Code to frame a charge; and, in any case, the omission to frame a charge was no ground for setting aside the conviction; the accused had already cross-examined the amin without eliciting anything tending to shake his credit, and there had been no failure of justice.

*Criminal Reference No. 490 of 1930.

The parties were not represented.

KING, J :—Ambika Prasad was accused of offences under sections 186 and 353 of the Indian Penal Code for obstructing and assaulting a kurk amin in the discharge of his duty. The trial was begun as that of a warrant case, but after the two principal witnesses, the amin and the decree-holder, had been examined and cross-examined, and the examination of the accused had been recorded, the Magistrate found that the evidence did not support a conviction under section 353, and therefore framed no charge, but ordered that the case should proceed (as a summons case) in respect of the offence under section 186 only.

The defence was an *alibi* which the Magistrate had good grounds for disbelieving. He found an offence under section 186 clearly established by the evidence of three eye-witnesses and convicted the accused.

The Sessions Judge of Banda recommends that the conviction be set aside because the Magistrate should have framed a charge under section 186 and should thus have given the accused an opportunity of cross-examining the amin for the second time. He relies on a ruling of a single judge of this Court in *Ganga Saran v. Emperor* (1), which supports his view. With due respect to the learned Judge I do not agree that the court was bound to frame a charge. Section 254 of the Code of Criminal Procedure requires a Magistrate to frame a charge only when he "is of opinion that there is ground for presuming that the accused has committed an offence *triable under this chapter*" i.e. an offence punishable with death, transportation or imprisonment for a term exceeding six months. As the Magistrate was of opinion that no such offence had been established, I hold that he was not bound to frame a charge. In any case the omission to frame

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a charge is no ground for setting aside the conviction. Even if the omission appears to have occasioned a failure of justice the utmost that I could do under section 535(2) would be to order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge. This would give the accused an opportunity of a second cross-examination of the amin, and if I thought there was the least likelihood of the result of the trial being thereby affected I might do so. Or I might give the accused an opportunity of further cross-examination without ordering that a charge be framed. But the accused has already cross-examined the amin without eliciting anything tending to shake his credit. Moreover the guilt of the accused is established by the evidence of two other eye-witnesses who have been believed. No useful purpose will be served by permitting further cross-examination of the amin. The prosecution case is too clear and the defence is too incredible. There has been no failure of justice. I reject the reference. Let the records be returned.

Before Mr. Justice Bennet.

1930
August, 4.

EMPEROR v. SHEO PRATAP SINGH AND OTHERS.*

Criminal Procedure Code, sections 190(1)(a), 190(1)(c) and 191—"Complaint"—"Information"—Magistrate taking cognizance upon written complaint by Tahsildar—Section 191 not applicable—Court fee.

Where an amin wrote to a Tahsildar, stating that certain persons had assaulted him in the discharge of his duty, and the Tahsildar forwarded this writing to a Magistrate and himself wrote to him stating that the persons named had committed an offence under section 353 of the Indian Penal Code and requesting that they be tried under that section, and

*Criminal Revision No. 355 of 1930, from an order of Rup Kishen Agha, Sessions Judge of Allahabad, dated the 9th of July, 1929.