

money was required for immoral purposes, or that defendants had notice of the fact. Under such circumstances the plaintiffs are not in a position to succeed in their suit. We decree the appeal and reverse the decree of the lower appellate Court and restore that of the first Court which dismissed the suit with all costs.

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DARSU  
PANDEY  
v.  
BIKARMAJI  
LAL.

*Appeal allowed.*

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## CRIMINAL JURISDICTION.

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1880  
August 7.

*Before Mr. Justice Pearson.*

EMPRESS OF INDIA v. GURDU AND ANOTHER.

*Omission to prepare charge—Acquittal—Discharge—Revival of Prosecution—*

*Act X of 1872 (Criminal Procedure Code), ss. 216, 220, 208.*

A Magistrate tried and acquitted a person accused of an offence without preparing in writing a charge against him. Such omission did not occasion any failure of justice. *Held*, with reference to s. 216 of Act X of 1872, Explanation I, that such omission did not invalidate the order of acquittal of such person and render such order equivalent to an order of discharge, and such order was a bar to the revival of the prosecution of such person for the same offence.

THIS was an application to the High Court for the revision, under s. 297 of Act X of 1872, of the order of Mr. J. Kennedy, Magistrate of the Ghazipur District, dated the 3rd June, 1880, convicting the petitioners of theft, an offence punishable under s. 379 of the Indian Penal Code, and sentencing them to rigorous imprisonment for four months. The petitioners were originally accused of the theft before a Magistrate subordinate to Mr. J. Kennedy. The Subordinate Magistrate, after taking the evidence of the witnesses for the prosecution and for the defence, on the 22nd April, 1880, without having prepared in writing a charge against the petitioners, determined the case in their favor. He concluded his judgment in the case in these terms:—"I find the accused, Gurdu and Birju, not guilty, and hereby acquit them." The District Magistrate, being of opinion that the Subordinate Magistrate had misappreciated the evidence against the petitioners, re-instituted proceedings against them, and, on the 3rd June, 1880, convicted them of the theft. In his judgment the District Magistrate

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expressed his opinion that the order of the Subordinate Magistrate was not, with reference to s. 220 of Act X of 1872, an order of acquittal, but an order of discharge, inasmuch as the Subordinate Magistrate had omitted to prepare in writing a charge against the petitioners; and that such order, therefore, did not bar the revival of the prosecution of the petitioners.

The grounds on which revision was sought were that the omission of the Subordinate Magistrate to prepare in writing a charge against the petitioners did not invalidate his order of acquittal, and that, as the petitioners had been previously acquitted of the theft by a competent Magistrate, the Magistrate of the District had no jurisdiction to try them again for that offence.

Mr. Colvin, for the petitioner.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji), for the Crown.

PEARSON, J.—The proceedings of the Officiating Magistrate of the District are altogether unwarrantable. The basis of them was an application made to him under s. 298, Act X of 1872; but under the provisions thereof, if he was of opinion that the Deputy Magistrate's judgment or order was contrary to law, or that the punishment awarded by that officer was too severe or inadequate, the proper course was to report the proceedings for the orders of the High Court. But that section does not authorize the Magistrate himself to set aside the sentence of a subordinate Court, or recognize as a ground of interference a difference of opinion as to the value of the evidence recorded in the case.

The Officiating Magistrate is also wrong in holding that the accused had not been acquitted by the Deputy Magistrate on the charge on which he has tried them. The Deputy Magistrate's judgment of the 22nd April last concludes with these words:—"I find the accused Gurdu and Birju not guilty and hereby acquit them." The Magistrate, in advertence to the Explanation given under s. 220 of the Code wherein it is said that "if no charge is drawn up, there can be no judgment of acquittal or conviction," holds the Deputy Magistrate's judgment not to be a legally valid judgment of acquittal, because no charge was drawn up in the

case disposed of by the latter. But the rule that, if no charge is drawn up, there can be no judgment of acquittal or conviction, is subject to the exception of cases provided for in Explanation I to s. 216 of the Code. That Explanation is that the omission to prepare a charge shall not invalidate a charge, if in the opinion of the Court of appeal or revision, no failure of justice has been occasioned thereby. In the case decided by the Deputy Magistrate, although a charge may not have been formally drawn up, the accused were called upon to answer to the charge preferred against them by the complainants. There is no pretence for saying that any failure of justice was occasioned by the omission to draw up a formal charge; nor was that the ground on which the application under s. 298 was preferred to the Officiating Magistrate, or on which he proceeded to retry the accused. The alleged misappreciation of evidence by the Deputy Magistrate was the ground of the Officiating Magistrate's proceedings. Those proceedings being illegal by reason of the previous acquittal of the accused on the same charge are hereby cancelled, the sentence passed by the Officiating Magistrate on the petitioners is annulled, and their immediate release is ordered.

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 APPELLATE CIVIL.
 

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1880  
August 3

*Before Mr. Justice Pearson and Mr. Justice Oldfield.*

AMAR NATH, GUARDIAN OF LACHMI NARAIN, A MINOR (PLAINTIFF), v.  
THAKUR DAS AND OTHERS (DEFENDANTS).\*

*Suit for specific moveable Property or for compensation—Court-fees—“Multifarious Suit”—Act VII of 1870 (Court Fees Act), s. 7, cl. i, and s. 17.*

A, to whom a certificate of administration in respect of the property of a minor had been granted in succession to B, whose certificate had been revoked, sued B claiming the delivery of specific moveable property of various kinds belonging to the minor, which had been intrusted to B and B detained, or the value of each kind of property as compensation in case of non-delivery. Held that the suit did not embrace “distinct subjects” within the meaning of s. 17 of the Court Fees Act, 1870, and the court-fees payable in respect of the plaint in the suit should be computed, under cl. i, s. 7 of that Act, according to the total value of the claim.

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\* First Appeal, No. 64 of 1880, from a decree of Maulvi Nasir Ali Khan, Subordinate Judge of Saharanpur, dated the 30th January, 1880.