

REVISIONAL CRIMINAL

Before Mr. Justice Ziaul Hasan

1940

March, 18

MATHURA AND OTHERS (ACCUSED-APPLICANTS) *v.* KAMTA
(COMPLAINANT-OPPOSITE-PARTY)*

Criminal Procedure Code (Act V of 1898), sections 192A, and 537—Magistrate to whom case transferred lacking jurisdiction—Order of transfer, validity of—Defect of jurisdiction, whether curable under section 537, Criminal Procedure Code.

If the magistrate to whom a case is transferred lacks jurisdiction to try the case, the order of transfer is bad in law. The jurisdiction of the court to hear a case depends on the allegations with which its help is sought. *Raghu Singh v. Abdul Wahab* (1), *Budhan Mahto v. Issur Singh* (2), and *Raghunandan Prasad v. King-Emperor* (3), relied on.

MR. B. K. DHAON, for the applicants.

ZIAUL HASAN, J. :—This is an application in revision against an order of the learned Sessions Judge of Unao, dated the 26th September, 1939, rejecting the applicants' application for revision of the appellate order of a Magistrate.

One Kamta Teli filed a complaint under sections 427, 447 and 323, Indian Penal Code and section 24 of the Cattle Trespass Act against the present applicants. The learned Sub-Divisional Magistrate to whom the complaint was made transferred it for trial to a tahsildar Magistrate who had third class powers. The Tahsildar summoned the accused to answer charges under sections 426, 447 and 323, Indian Penal Code and section 24 of the Cattle Trespass Act. The accused were convicted under section 24 of the Cattle Trespass Act only and while two of them were fined Rs.10 each the other two were fined Rs.2 each. The accused appealed but their

*Criminal Revision application No. 129 of 1939, for revision of the order of Tika Ram Misra, Esq., Rai Bahadur, Sessions Judge of Unao, dated the 26th of September, 1939.

(1) (1896) I.L.R., 23 Cal., 442.

(2) (1907) I.L.R., 34 Cal., 926.

(3) (1925) A.I.R., All., 290.

appeal was dismissed. Thereupon the accused applied to the learned Sessions Judge in revision mainly on the ground that as the allegation in the complaint was that crops worth about Rs.60 were damaged by the accused by means of their cattle, the case could not be tried by a Magistrate of the third class. The learned Judge however held that as the witness under section 202, Criminal Procedure Code as well as the complaint and other witnesses during the trial stated that the damage amounted to Rs.30 or Rs.40 there was no defect of jurisdiction in the trial court. On this ground he rejected the revision application. The applicants now come to this Court and raise the same ground again.

It cannot be doubted that an offence under section 427 is, according to column 8 of the second schedule of the Criminal Procedure Code, triable by a Magistrate of the first or second class and not by a Magistrate of the third class. Under section 192 of the Code a Magistrate of the first class empowered by the District Magistrate has power to transfer a case of which he has taken cognizance for inquiry or trial to another Magistrate in the district who is "competent to try the case or to commit him for trial." From this it is clear that if the Magistrate to whom a case is thus transferred lacks jurisdiction to try the case the order of transfer is bad in law. This view is fully supported by the cases of *Raghu Singh v. Abdul Wahab* (1), and *Budhan Mahto v. Issur Singh* (2). In the case of *Raghunandan Prasad v. King Emperor*, (3), it was held that the jurisdiction of the court to hear a case depends on the allegations with which its help is sought. Further on it is said:

"It may be that after a trial, it is found that the case has been materially exaggerated; but unless it has been found at the very outset that the allegations are exaggerated with the intention of seeking a particular court for redress the statement of the complainant in a criminal case and the statement of the plaintiff in a civil case has to be accepted for the purpose of jurisdiction."

(1) (1896) I.L.R., 23 Cal., 442. (2) (1907) I.L.R., 34 Cal., 226.

(3) (1925) A.I.R., All., 290.

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In the present case not only was the amount of damage fixed at Rs.60 in the complaint but the plaintiff in his statement also said that he suffered a loss of about Rs.60. It was only when a witness was examined under section 202, Criminal Procedure Code, that the amount of loss was reduced to Rs.40. The order of transfer was passed before this witness was examined and so the court's jurisdiction must be determined on the allegations made in the complaint and on the complainant's statement in support of the complaint. This being so, the order of transfer to the Court of the Tahsildar passed by the Sub-Divisional Magistrate was, under section 192, Criminal Procedure Code, illegal and therefore the trial of the case by the Tahsildar was without jurisdiction. The case is not in my opinion covered by section 537, Criminal Procedure Code, as a question of jurisdiction is involved and a defect of jurisdiction is not curable by section 537 [(vide *Khuda Bakhsh v. Emperor* (1).]

I, therefore accept this application and set aside the conviction and sentences of the applicants. As regards retrial I am of opinion that in view of the facts that the accused were acquitted under all the charges other than that of section 24 of the Cattle Trespass Act and that the matter is a trivial one, it is not necessary that the accused should be retried.

Application accepted.