

REVISIONAL CRIMINAL.

Before Mullick and Kulwant Sahay, J.J.

GOBINDA SWAIN

v.

KING-EMPEROR.*

1922.

Dec. 18.

Criminal Procedure Code, 1898 (Act V of 1898), section 528—transfer of criminal case—notice to accused, whether necessary.

Although it is desirable that notice should be given to the accused person before a case is transferred under section 528, Criminal Procedure Code, 1898, yet omission to give such notice is a mere irregularity and is not a sufficient ground for setting aside the order of transfer.

The facts of the case material to this report were as follows :—

The complainant filed a complaint against his landlord and two other persons alleging that he had been beaten by them and that the landlord had taken four thumb impressions from him and two thumb impressions from his brother upon blank pieces of paper with the intention of using them hereafter.

The Subdivisional Magistrate before whom the complaint was lodged directed a police enquiry, and, finding that the charge of extorting the thumb impressions on blank pieces of paper with the intention that they might be hereafter converted into valuable security was false, he issued processes under section 352, Penal Code, against Golab Khan, and made the case over to a Bench of two Honorary Magistrates. The Honorary Magistrates, after examining three witnesses, thought that a case was made out against the *zamindar* and one of his servants and they issued processes against these persons also. The trial was begun afresh and a number

*Criminal Revision No. 719 of 1922 from an order of G. E. Owen, Esq., District Magistrate of Puri, dated the 20th November, 1922, setting aside the order of Babu S. C. Ghosh, Honorary Magistrate, dated the 15th November, 1922.

1922.

GOBINDA
SWAIN
v.
KING-
EMPEROR.

of witnesses were examined and cross-examined. At this stage the complainant applied to the District Magistrate and prayed that the case should be transferred to some other Court as the Bench Magistrates had no jurisdiction to try a charge under section 384, Penal Code. The District Magistrate, without issuing any notice upon the accused, acceded to that request, and he has transferred the case to another Magistrate empowered to try the case.

Gour Chandra Pal, for the petitioner.

H. L. Nandkeolyar (Assistant Government Advocate), for the Crown.

MULLICK, J.—(After stating the facts of the case as set out above, proceeded as follows):—

Now, it is clear that the omission to issue a notice upon the accused before ordering the transfer was certainly irregular. I cannot go so far as to say that it was illegal and that section 528, Criminal Procedure Code, empowers a Magistrate to make an order of transfer only after issuing a notice upon the person affected. The section is general in its terms and, although, as a rule of practice, it is desirable that notices should be issued, I cannot say that the law is mandatory upon the point and that the omission to issue notice is in itself a reason for setting aside an order of transfer. But upon the merits, I think, there is good ground for objecting to the learned District Magistrate's procedure. Here the case for the prosecution has been practically closed and even though the Bench Magistrates may have expressed the opinion that the graver charge under section 384 was, in their opinion, not sustainable, I doubt whether that circumstance would be any justification for an appellate Court's removing the case from the jurisdiction of the tribunal which was seized with it. It is not the object of section 528 that a case should be transferred merely because it is going against a particular party. Here it will be open to the complainant, after the disposal

of the case under section 352, Penal Code, which is the only offence which the Bench Magistrates are investigating; to move the officer empowered to take cognizance thereof; to proceed with the trial of the charge under section 384; and the proposal that the case should now be tried by another Court will really effect no saving, either of time or trouble. In any event there will have to be a fresh trial by the officer to whom the learned District Magistrate has transferred the case.

I do not therefore think that, in the present instance, sufficient reason has been shown for removing the case from the file of the Bench Magistrates and transferring it to another Magistrate.

The Bench Magistrates have full jurisdiction to disbelieve the allegations as to extortion and to convict or acquit on the charge of simple assault and nothing should be done by the appellate Court that may give rise to any impression that an attempt is being made to interfere with the judgment of the trial Court.

In these circumstances the order of the District Magistrate will be set aside and the case will proceed in the Court of the Honorary Magistrates from the stage at which it was left when the order of transfer was made.

KULWANT SAHAY, J.—I agree.

Order set aside.

APPELLATE CIVIL.

Before Adami and Das, J.J.

PANDE SATDEO NARAIN

v.

RAMAYAN TEWARI.*

Code of Civil Procedure, 1908 (Act V of 1908), Order XXXII, rules 3(4) and 4(3)—Guardian ad litem, appointment

*Appeal from Original Decree No. 59 of 1919, from a decision of Maulavi Wali Muhammad, Additional Subordinate Judge of Saran, dated the 14th September, 1918.

1922.

GOBINDA
SWAIN

v.
KING-
EMPEROR.

MULLICK, J.

1922.

Jan. 2.