

later as he states. The circumstances of the case bring it within section 115(c) and it is open to this Court in revision, and it is warranted by the facts before us, to direct that the application under Order IX, rule 9, should be restored to the file of the learned Subordinate Judge and heard by him at an early date. The applicant will submit himself and his witness for cross-examination and the opposite party will be entitled to adduce the evidence of the stamp-vendor or any other evidence which he considers proper. The defendant-respondent will be allowed in this Court his costs of the appeal.

ADAMI, J.—I agree.

Case remanded.

CRIMINAL MISCELLANEOUS.

Before Adami and Macpherson, JJ.

SAILENDRA NATH CHAKERVARTY

v.

KING-EMPEROR.*

1928.

Jan., 20.

Santal Parganas Justice Regulation, 1893 (Beng. Reg. V of 1893), section 4(1)—enquiries and trials before a Magistrate—Commissioner of Bhagalpur is the High Court—Patna High Court, jurisdiction of, to transfer a case during enquiry by a Magistrate—Letters Patent, paragraph 17 and 22, scope, of.

Under section 4(1), Santal Parganas Justice Regulation, 1893, in the Santal Parganas the words "High Court" mean, first, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Court of Patna, and in reference to proceedings against other persons:—

- (a) in cases tried by the Court of Session and in appeals under section 417 from original or appellate orders of acquittal, the High Court of Patna; and
- (b) in other cases the Commissioner.

* Criminal Miscellaneous Case.

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Held, (i) that in the case of inquiries and trials before a Magistrate in the Santal Parganas, the Commissioner of Bhagalpur is the High Court;

(ii) that the High Court of Patna has no jurisdiction to interfere by way of ordering a transfer of a case during an inquiry by a Deputy Magistrate prior to commitment to the Court of Session;

(iii) that it is only when the case has actually come before the Sessions Judge that the High Court can interfere.

Anwar Ali v. The Chairman, Deoghar Municipality(1), followed.

Paragraphs 17 and 22 of the Letters Patent of the Patna High Court must be read subject to the Santal Parganas Justice Regulation, 1893, which declares that Criminal Courts in the Santal Parganas, other than the Session Court, are not subordinate to the Patna High Court.

The facts of the case material to this report are stated in the order of Adami, J.

P. C. Manuk, for the Crown.

H. L. Nandkeolyar, for the petitioners.

ADAMI, J.—It appears that following the discovery of certain weapons and literature at Deoghar and following an investigation, a complaint was made before the Subdivisional Officer of Deoghar on behalf of the Crown, charging the present ten petitioners and some others with offences under sections 121A, 120B, 395, 302 of the Indian Penal Code and section 20 of the Arms Act. The Deputy Commissioner of the Santal Parganas took over the case from the Subdivisional Officer and thereafter transferred the inquiry to a Special Magistrate, Mr. A. K. Bose at Dumka. The 3rd of January was fixed for the hearing at Dumka. On that date, after the learned Counsel for the Crown had opened the case, an adjournment was asked for on the ground that the petitioners desired a transfer of the case. An adjournment was accordingly granted, and now the petitioners come before this Court asking that the case may be transferred from Dumka on the

(1) (1027) L. L. R. 6 Pat. 89.

ground that Dumka is inaccessible and very inconvenient for the lawyers and friends of the petitioners.

The question arises at once whether this Court has any jurisdiction to pass an order of transfer in this case. Under section 4(i) of the Santal Parganas Justice Regulation of 1893, in the Santal Parganas the words "High Court" mean, first, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Court of Patna and in reference to proceedings against other persons—

- (a) in cases tried by the Court of Session and in appeals under section 417 from original or appellate orders of acquittal the High Court of Patna; and
- (b) in other cases, the Commissioner.

It is clear from this that, during the stage of inquiry, the High Court of Patna has no jurisdiction, for according to the section I have cited, it is only in cases tried by the Court of Session and in appeals under section 417 that this Court has any jurisdiction. In the case of inquiries and trials before the Deputy Magistrate in the Santal Parganas the Commissioner of Bhagalpur is the High Court. The question of jurisdiction has been considered from the point of view of a revisional application for a reversal of an order of acquittal lodged by private persons in the case of *Anwar Ali v. The Chairman, Deoghar Municipality*(1). The position of this Court with regard to cases arising out of the Santal Parganas was discussed and it was held that, where an application in revision to set aside an order of acquittal passed by a Subordinate Magistrate is lodged before this Court by a private person, this Court has no jurisdiction. In the present case we have to decide whether this Court can be approached, during the inquiry by a Deputy Magistrate prior to commitment to Sessions, to interfere by way of ordering a transfer, and we are quite decided that this

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Court has no such jurisdiction, for the words of the Regulation are quite plain. It is only when the case has actually come before the Sessions Judge that this Court can interfere.

Mr. Nandkeolyar has argued before us that, since in cases under section 417 this Court is the High Court for the purpose of that section, therefore this Court has jurisdiction in the Santal Parganas and can interfere in all cases, since, as he argues, if this Court has under section 417 power to set aside an acquittal by any Criminal Court in the Santal Parganas, it must have a measure of superintendence over those Courts and cannot be said to be without jurisdiction in the Santal Parganas. I cannot support this argument; for it is quite clear from the words of the Regulation that it is only in cases where Government appeals against an acquittal that this Court can have jurisdiction. The Criminal Courts in the Santal Parganas, other than the Session Court, are not within the jurisdiction of this Court.

Mr. Nandkeolyar has also pointed out that, if it is held that the Commissioner of Bhagalpur is the High Court for the purpose of the present case, the petitioners will not be able to obtain what they desire, namely, a transfer of the case to a district outside the Santal Parganas. It is quite true that the Commissioner as a High Court would not be able to transfer the case out of the Santal Parganas, but we must take the law as it stands, and the law allows an application for a transfer of a case other than a case before the Sessions Judge to be made only to the Commissioner of Bhagalpur, as the High Court for the Santal Parganas and does not allow this Court to interfere.

Mr. Nandkeolyar has further referred us to paragraphs 17 and 22 of the Letters Patent of this Court. His point is that paragraph 17 gives this Court criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and therefore all criminal

Courts in the Santal Parganas are subject to the superintendence of this Court, since all those Courts are within the jurisdiction of the Sessions Judge who is subject to the superintendence of this Court. That is not the meaning of that paragraph. The Letters Patent must be read subject to the special legislation in the form of Regulation V of 1893 which declares that the Courts other than the Session Court are not subordinate to this Court as their High Court. As to paragraph 22 it is argued that the inquiry Court being a Criminal Court, therefore that paragraph which gives the High Court of Patna power to direct the transfer of a criminal case in any Criminal Court, empowers this Court to order the transfer of the present case. Now, paragraph 22 has to be read subject to the Regulations. It is clearly laid down in paragraph 30 of the Letters Patent that effect must be given to the special law embodied in Regulation V of 1893.

It is not necessary, I think, to go further into the arguments put before us, seeing that it is so plain, on the language of the Regulation, that this Court cannot, while the case is still in the state of inquiry, interfere by way of ordering a transfer.

The application must be rejected.

MACPHERSON, J.—I agree.

Application rejected.

APPELLATE CIVIL.

Before Ross and Wort, JJ.

CHOTA NAGPUR BANKING ASSOCIATION, LTD.

v.

KUMAR KAMAKHYA NARAYAN SINGH.*

Transfer of Property Act, 1882 (Act IV of 1882)—non-permanent tenure created before the Act, whether transferable

* Appeal from Original Decree no. 168 of 1924, from a decision of M. Saiyid Muhammad Zarif, Subordinate Judge of Hazaribagh, dated the 31st of May, 1924.

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ADAMI, J.

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