REVISIONAL CRIMINAL.

Before James and Agarwala, JJ.

HARI CHARAN MISRA

v.

THE KING-EMPEROR.*

1933.

Feb. 17.

Criminal trial—commitment on a charge of criminal conspiracy—Penal Code, 1860 (Act XLV of 1860), sections 467 and 471—sanction of Local Government not obtained—Code of Criminal Procedure, 1898 (Act V of 1898), section 196A(2)—Sessions Judge, refusal of, to record a sentence either of acquittal or conviction—order, whether improper or illegal—initiation of fresh proceeding under Chapter XVIII, whether legal—High Court, power of, to quash illegal commitment at any stage.

The accused persons were committed for trial by the magistrate on a charge of criminal conspiracy punishable under section 120B read with sections 467 and 471 of the Penal Code, 1860. By the provisions of section 196A(2) of the Code of Criminal Procedure, 1898, the sanction of the Local Government was necessary to the initiation of proceedings before the court could take cognizance of the offence; but the sanction had not been obtained. The trial proceeded to the stage at which the opinion of the assessors was taken when it was brought to the notice of the Assistant Sessions Judge that he had no power to deal with the case. The Judge then held that the trial which had taken place was ab initio void, and he passed no sentence of conviction or acquittal. He directed that the District Magistrate should be informed of the facts and that the accused persons should remain in the position in which they were before the enquiry began. After the order had been recorded by the Judge, sanction from the Local Government was obtained to the prosecution under sections 467 and 471 read with section 120B of the Penal Code. A fresh complaint was made and the magistrate proceeded to hold a new enquiry under Chapter XVIII of the Code. The accused moved the High Court for staying further proceedings in this enquiry on the ground that the Judge acted illegally in failing to deliver final judgment, and that the trial before him must be treated as still pending.

* Criminal Revision no. 13 of 1933, from an order of Babu Narendra Nath Banerji, Assistant Sessions Judge of Bhagalpur, dated the 14th March, 1932.

1933.

HARI CHARAN MISRA v. THE KING-EMPEROR.

Held, (*i*) that no court had power to take cognizance of the offence of criminal conspiracy unless the Local Government had by an order in writing consented to the initiation of the proceedings, so that the whole proceedings were ab initio void, the commitment was void, and the trial was void and the Judge had no jurisdiction to pronounce a verdict either of acquittal or conviction;

(*ii*) that, therefore, the order of the judge was neither improper nor illegal.

Abdul Rahman v. *King-Emperor*(1), followed.

Nathu Rewa v. *Emperor*(2), not followed.

Kambala Narayana, In re(3) and *Ramprasad Guru* v. *The King-Emperor*(4), distinguished.

Sheikh Muhammad Yasin v. *King-Emperor*(5) and *Banerji* v. *Bepin Behary Ghosh*(6), referred to.

(*iii*) that although the High Court has power to quash an illegal commitment at any stage of the case, there were in fact no proceedings pending under the illegal commitment which required to be quashed;

(*iv*) that, therefore, there was nothing which stood in the way of the fresh proceeding under Chapter XVIII of the Code which called for an interference by the High Court.

The facts of the case material to this report are set out in the judgment of James, J.

D. P. Sinha and *K. N. Lal*, for the petitioner.

Assistant Government Advocate, for the Crown.

JAMES, J.—The petitioner was committed for trial by the Deputy Magistrate of Bhagalpur on a charge of criminal conspiracy punishable under sections 467 and 471 of the Indian Penal Code. By the provisions of section 196A(*2*) of the Criminal

(1) (1924) I. L. R. 3 Rang. 95.
(2) (1915) 31 Ind. Cas. 1000.
(3) (1919) 50 Ind. Cas. 832.
(4) (1929) 11 Pat. L. T. 433.
(5) (1926) I. L. R. 5 Pat. 452.
(6) (1925) 30 Cal. W. N. 382.

Procedure Code the sanction of the Local Government was necessary to the initiation of proceedings before the court could take cognizance of the offence; but this sanction had not been obtained. The trial proceeded to the stage at which the opinion of the assessors was taken, when it was brought to the notice of the Assistant Sessions Judge that he had no power to deal with the case. He then held that the trial which had taken place was ab initio void, and he passed no sentence of conviction or acquittal. He directed that the District Magistrate should be informed of the facts, and that the accused persons should remain in the position in which they were before the enquiry began.

The case had been originally instituted on the complaint of the local Superintendent of Post Offices. After the order had been recorded by the Assistant Sessions Judge, sanction from the local Government was obtained to the prosecution under sections 467 and 471 read with section 120B of the Indian Penal Code. A fresh complaint was made and the Magistrate proceeded to hold a new enquiry under Chapter XVIII of the Criminal Procedure Code. We are asked to stay further proceedings in this enquiry on the ground that Assistant Sessions Judge acted illegally in failing to deliver final judgment, and that the trial before him must be treated as still pending. The learned Advocate for the petitioner argues that the Assistant Sessions Judge, when he had once entered on the trial, had no alternative but to proceed to judgment. He cites the decision in the case of *Nathu Rewa* v. *Emperor*(1) wherein a Sessions Judge finding at the end of the trial that there had been a misjoinder of charges cancelled the trial, and decided to hold a fresh trial against the accused. The Bombay High Court held that when the Sessions Judge had reached the stage at which the assessors' opinion had been recorded, he had no option but to deliver judgment in accordance with the provisions of the

(1) (1915) 31 Ind. Cas. 1000.

1933.

HARI CHARAN MISRA v. THE KING-EMPEROR.

JAMES, J.

Criminal Procedure Code. The learned advocate cites also the case of *Kambala Narayan*(1); but in that case it was merely pointed out that where a Sessions Judge was trying one offence with the aid of a jury, and another offence with the aid of assessors, the fact that he found it necessary to make a reference under section 307 of the Code of Criminal Procedure against the verdict of the jury did not absolve him from his duty to give judgment on the charge that he had tried with the aid of assessors. But the learned Assistant Sessions Judge in dealing with the present case remarked that this was a case in which the proceedings were ab initio illegal. In the case of *Abdul Rahman* v. *King-Emperor*(2), which is quoted by the learned Assistant Sessions Judge, the District Magistrate had taken cognizance of an offence punishable under section 120B, which required previous sanction of the local Government under section 196A of the Criminal Procedure Code, without obtaining that sanction. It was pointed out by Robinson, J. that the whole of the proceedings were ab initio without jurisdiction and illegal. In that case, as in the present case, no court had power to take cognizance of the offence of criminal conspiracy unless the local Government had by an order in writing consented to the initiation of the proceedings, so that the whole proceedings were ab initio void, the commitment was void, and the trial was void and the Assistant Sessions Judge had actually no jurisdiction to pronounce a verdict either of acquittal or of conviction. The learned Advocate quotes the case of *Ramprasad Guru* v. *The King-Emperor*(3) wherein this Court, dealing with an offence committed outside British India for which the sanction of the Political Agent was necessary in order to give jurisdiction to the British Court, recorded an order acquitting on appeal the person who had been convicted. In that case, to which I was a party, the form of the order must, I think, be admitted to have

(1) (1919) 50 Ind. Cas. 882.
(2) (1924) I. L. R. 3 Rang. 95.
(3) (1929) 11 Pat. L. T. 433.

been incorrect and it was apparently made by inadvertence. The order should have been that the conviction was set aside and not that the accused was acquitted.

It is not easy to say what useful purpose could be served by an order such as the learned Advocate suggests should be made by the Assistant Sessions Judge. We cannot order him to record judgment in accordance with the ordinary procedure, for that would be to order him to acquit or convict. He cannot convict because he has no jurisdiction to entertain the charge, for want of the sanction of the local Government. He cannot acquit in such a manner that his acquittal will have the effect under section 403 of the Criminal Procedure Code of staying further proceedings: [*Sheikh Muhammad Yasin* v. *The King-Emperor*(1); *Banarji* v. *Bepin Behary Ghosh*(2)]. It does not appear that the order which he has recorded is in any way improper or illegal. The learned Sessions Judge, when the application was made before him, for revision of the order of the Subdivisional Magistrate to issue process on the second complaint, treated the order of the Assistant Sessions Judge as made under section 532 of the Criminal Procedure Code. The learned Advocate for the petitioner points out that section 532 applies only to those cases, in which the Magistrate who made the complaint purported to exercise powers duly conferred which had not been so conferred; and that neither of the two alternative courses prescribed by the section were open to the Assistant Sessions Judge in this case. The Sessions Court may accept the commitment, or in the alternative it may quash the commitment and direct fresh enquiry by a competent Magistrate. The Assistant Sessions Judge could not in this case accept the commitment, because the Magistrate had no jurisdiction to entertain the charge, and the Assistant

(1) (1926) I. L. R. 5 Pat. 452.
(2) (1925) 30 Cal. W. N. 382.

1933.

HARI CHARAN MISRA v. THE KING-EMPEROR.

JAMES, J.

Sessions Judge in the circumstances had no jurisdiction to try it. He could not adopt the alternative procedure of quashing the commitment and directing a fresh enquiry by a competent Magistrate, because so long as the sanction of Government for the prosecution was wanting, no Magistrate was competent to hold the enquiry. There has been some discussion in this Court on the question of whether it is now open to us to quash the original commitment of the Assistant Sessions Judge under section 215 of the Criminal Procedure Code. It appears to us that there is no reasonable ground for holding that the High Court has no power to quash an illegal commitment at any stage of the case, as was held in *The Empress* v. *Shibo Behara*(1); but no order quashing the commitment is necessary in the present case. The commitment was void ab initio; and although if proceedings under that illegal commitment had been actually pending at present against the petitioner, it might have been necessary to quash them, there are now no proceedings pending which require to be quashed by any order of this Court, since the Assistant Sessions Judge himself discovered that the commitment was void ab initio; and that neither he nor any other court had any power on those proceedings to record a judgment either of acquittal or conviction. There is nothing, therefore, which stands in the way of the proceeding under Chapter XVIII of the Code now pending in the Court of the Subdivisional Magistrate, and this application must be dismissed.

AGARWALA, J.—I agree.

Rule discharged.

(1) (1881) I. L. R. 6 Cal. 584.