

Commissioner of Income-tax so far as relating to the seventh question as above numbered be allowed, the judgment of the High Court reversed, and the Order of the Commissioner of the 24th May, 1927, restored, and as regards the other questions on which he appealed be dismissed; (2) the appeal of the Maharajadhiraj of Darbhanga be dismissed; and (3) the case be referred back to the High Court in order that effect may be given to the Order to be pronounced herein by His Majesty in Council.

1933.

 COMMISSIONER OF
 INCOME-TAX,
 BIHAR AND
 ORISSA
 v.
 MAHARAJA-
 DHIRAJ OF
 DARBHANGA.
 LORD
 MACMILLAN.

Inasmuch as the Commissioner of Income-tax has been successful on one of the two points on which he appealed and the assessee has been unsuccessful on all the points of his appeal, the Commissioner will have three-fourths of his costs of the consolidated appeals before this Board. The costs below will be dealt with by the High Court, on the case going back to it.

Solicitor for Commissioner: *Solicitor, India Office.*

Solicitors for assessee: *H. S. L. Polak and Company.*

CRIMINAL REFERENCE.

Before Macpherson and Agarwala, JJ.

DEONARAIN SINGH

v.

KING-EMPEROR.*

1933.

 Jan. 25, 26.

Code of Criminal Procedure, 1898 (Act V of 1898), section 192(1)—“ case of which he has taken cognizance ” meaning of—subdivisional magistrate, cognizance taken by, on charge-

* Criminal Reference no. 95 of 1932 made by Rai Bahadur Surendra Nath Mukharji, District and Sessions Judge, Patna, in his letter no. 2625/WR., dated the 9th December, 1932.

1933.

DEONARAIN
SINGH
v.
KING-
EMPEROR.

sheet submitted by police—case transferred to subordinate magistrate “for disposal”—order, effect of—subordinate magistrate alone in seisin of the case—order of subdivisional magistrate calling for supplementary charge-sheet against other accused persons concerned in the offence, whether legal.

Section 192(1), Code of Criminal Procedure, 1898, lays down :—

“Any Chief Presidency Magistrate or Subdivisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial, to any Magistrate subordinate to him.”

Held, that “case of which he has taken cognizance”, occurring in section 192(1), means nothing more than “the judicial investigation into any offence of which he has taken cognizance”.

Where, therefore, a subdivisional magistrate, having taken cognizance of an offence on a charge-sheet submitted by the police, made over to a subordinate magistrate the charge-sheet and the accused forwarded by the police with an order that the transfer was “for disposal”, and subsequently on an application being made to him, the subdivisional magistrate called for a charge-sheet against some of the other accused persons named in the original charge-sheet but whom the police did not propose to send up for trial.

Held, (i) that the effect of the order of transfer was that the whole case, namely, the judicial investigation into the offence, and not merely the judicial investigation into the offence so far as regards the particular accused, was made over to the subordinate magistrate;

Ajab Lal Khirker v. Emperor(1), followed.

(ii) that the subordinate magistrate alone had seisin of the case and no other magistrate was competent to deal with it and, therefore, the order of the subdivisional magistrate calling for a supplementary charge-sheet against some other accused persons concerned in the offence was without jurisdiction.

Golapdy Shaikh v. Queen-Empress(2), followed.

(1) (1905) I. L. R. 32 Cal. 788.

(2) (1900) I. L. R. 27 Cal. 979.

1933.

 DEONARAIN
 SINGH
 v.
 KING-
 EMPEROR.

Reference made by the Sessions Judge under section 438 of the Code of Criminal Procedure, 1898.

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

S. P. Varma (with him *Saileswar De* and *B. B. Mukharji*), in support of the reference.

Naqi Imam and *Ramnandan Prasad*, against the reference.

MACPHERSON, J.—The Sessions Judge of Patna has referred the case of Deonarain Singh and five others who are on their trial before Maulavi S. A. Ashraf, Deputy Magistrate of Patna, with the recommendation that the order of the Subdivisional Magistrate dated the 3rd October last, calling for a supplementary charge-sheet against these six persons and one other be set aside as being without jurisdiction.

The police submitted a charge-sheet in which they mentioned twenty-two persons. Of these nine were sent up on bail and of the other thirteen noted as “accused persons not sent up for trial” six were shown as absconders. When the charge-sheet was placed before the Subdivisional Magistrate on the 19th September, he passed the order “Charge-sheet received against nine accused. To Maulavi S. A. Ashraf, Deputy Magistrate, for disposal”. Technically he was probably in error in saying that the charge-sheet had only been received against nine persons.

The case came on for hearing before the Deputy Magistrate on the 27th September. Apparently five of the persons described as absconders then appeared before him and the trial was taken up against fourteen persons in all without any comment by the Court, the Crown or the parties. On the same day a petition was filed before the Subdivisional Magistrate praying that a charge-sheet should be called for against the remaining seven accused (that is to say, the seven whom the

1933.

DEONARAIN
SINGHv.
KING-
EMPEROR.MACPHER-
SON, J.

police did not propose to send for trial) to avoid piecemeal trial. The Subdivisional Magistrate sent it to the Deputy Magistrate for necessary orders. Apparently owing to something which took place in the Court of the latter Magistrate, a further petition was filed before the Subdivisional Magistrate making the same request in view of the fact that the Deputy Magistrate 'could not dispose of the matter as he was not specially empowered to take cognizance of cases'. As a result of consultation between the two Magistrates, the Deputy Magistrate examined the diaries and on the 1st October gave it as his opinion that a charge-sheet might be called for in respect of those persons but guarded himself against a definite recommendation, leaving the matter for decision of the Subdivisional Magistrate. On the 3rd October the Subdivisional Magistrate called for a charge-sheet and when it was received, made a transfer to the same Deputy Magistrate "for favour of disposal". The two trials proceeded, to the stage of defence in the former case which was reached on the 11th November and in the latter case to the 21st November on which the case was postponed for argument and orders, to the 13th December prior to which the present reference had been made. It is a pity that the first case was not at once disposed of.

The learned Sessions Judge finding that the case of the petitioners is not distinguishable on principle from the line of authorities beginning with *Golapdy Shaikh v. Queen-Empress*(¹) submits that the order of the 3rd October is without jurisdiction and recommends that it be set aside.

Mr. S. P. Varma relies upon the case referred to in *Radhabullav Roy v. Benode Behari Chattarji*(²) and several other decisions of the Calcutta High Court and also upon *Shukadeva Sahay v. Hamid Mian*(³). As to the last-mentioned case, it has recently been

(1) (1900) I. L. R. 27 Cal. 979.

(2) (1902) I. L. R. 30 Cal. 449.

(3) (1927) I. L. R. 7 Pat 561.

dissented from by a Bench of this Court in *Uma Singh v. King-Emperor*⁽¹⁾ but not on the point before us. It is clear that on the 19th September the learned Subdivisional Magistrate did make over the whole case 'for disposal' and not merely the case against the nine accused whom the police had sent up on bail. Just as the Deputy Magistrate began the trial of the absconders who appeared before him, though they were not actually sent up by the police nor specifically covered by the order of transfer to him, he was, in my opinion, entitled to pass such orders as seemed to him fit in respect of the seven accused not sent up by the police who were not shown as absconders. It is true that in section 190(1) of the Code of Criminal Procedure the reference is to a magistrate taking cognizance of any offence, whereas section 192(1) authorizes certain superior magistrates to transfer any case of which they have taken cognizance. The difference in language has given rise to many surmises. But the correct view appears to be that 'case of which he has taken cognizance' means nothing more than 'the judicial investigation into any offence of which he has taken cognizance'. Since 1900 when the decision in *Golapdy Shaikh v. Queen-Empress*⁽²⁾ was given, there has been a *cursus curiæ* that once the Subdivisional Magistrate having taken cognizance of an offence on a charge-sheet submitted by the police in circumstances like the present, has made over to a subordinate magistrate the charge-sheet and the accused forwarded by the police in custody or bail with an order that the transfer is "for disposal", he has made over the judicial investigation into the offence and not merely the judicial investigation into the offence so far as regards the particular accused. At one time the subdivisional magistrate or joint magistrate made a distinction between making over a case "for disposal" and making it over "for hearing", it being understood that in the latter case he did not purport to make over the whole case. With regard to this

1933.

 DEONARAIN
SINGH
v.
KING-
EMPEROR.

 MACPHER-
SON, J.

 (1) (1932) I. L. R. 12 Pat. 234.

(2) (1900) I. L. R. 27 Cal. 979.

1933.

DEONARAIN
SINGH".
KING-
EMPEROR.MACPHER-
SON, J.

practice. Henderson, J., in *Ajab Lal Khirher v. Emperor*⁽¹⁾ said: "Whether such a transfer is made is a question of fact depending on the intention of the Officer making the order, which intention must be gathered from the order itself. Where no reservation is made as in the cases cited and in the case before us, I should certainly conclude that the entire case (in the sense abovementioned) had been transferred." In the present instance, the order itself appears to show that the whole case was made over. If the whole case was made over, the Deputy Magistrate had full seisin of it. In my opinion, in such circumstances it was not open to the Subdivisional Magistrate, unless he proceeded under section 528, to pass any orders with regard to the case and in particular to call for a charge-sheet against the petitioners. Manifestly he did not act under section 528.

In these circumstances, I see no reason for failing to follow the *cursus curiæ* and I would hold that the learned Subdivisional Magistrate was not authorized by law to pass the order of the 3rd October which has been referred to us. I would, therefore, accept the reference and set aside that order.

The case against the fourteen accused who are on their trial, should be disposed of without further delay. As soon as he has passed orders in that case the learned Deputy Magistrate should consider whether these petitioners and the seventh accused who has not surrendered and the absconders should be placed on their trial before him. If he decides to place them on their trial, it is hoped that in view of the time already spent over the proceedings, the new trial will be conducted with all reasonable expedition.

Let the records be sent back forthwith.

AGARWALA, J.—I agree.

Reference accepted.