

REVISIONAL CRIMINAL.

Before Mr. Justice Moti Sagar.

GIRDHARI—*Petitioner,*

versus

THE CROWN—*Respondent.*

Criminal Revision No. 231 of 1921.

*Criminal Procedure Code, Act V of 1898, section 350—
trial by Bench of Honorary Magistrates who have not heard the
whole of the evidence—whether legal.*

The Petitioner was tried and convicted for an offence under section 323, Penal Code, by a Bench of Honorary Magistrates, only one of whom had heard the entire evidence.

Held, that all criminal cases should be decided by Magistrates who have heard the whole of the evidence, and that section 350 of the Code of Criminal Procedure does not apply to cases tried by Benches of Magistrates ; consequently the conviction of the Petitioner must be set aside.

Safferuddin v. Ibrahim (1), *Ram Sunder De v. Rajab Ali* (2), *Shumbu Nath v. Ram Kamal* (3), *Hardwar Sing v. Khega Ojha* (4), *Damri Thakur v. Bhowani Sahoo* (5), *Queen-Empress v. Bassappa* (6), *Re Subramania Ayyar* (7), *Aga Park v. Nga Saw* (8), *Emperor v. Mathura* (9), *Abdul Aziz v. Emperor* (10), followed.

Revision of the order of H. K. Trevaskis, Esquire, District Magistrate, Ludhiana, dated the 20th November 1920, affirming that of Maulvi Abdul Rahim, and Rai Sahib Lala Mangat Rai, Bench (A) of Honorary Magistrates, 2nd Class, Ludhiana, dated the 9th October 1920, convicting the petitioner.

JAI GOPAL SETHI, for Petitioner.

NEMO. for Respondent.

MOTI SAGAR, J.—A complaint was instituted by one *Mussammatt* Permehshri against her brother-in-law Girdhari under section 323 of the Indian Penal Code. It was heard and decided by a Bench of Honorary Magistrates at Ludhiana, only one of whom heard the entire

(1) (1878) I. L. R. 3 Cal. 754.

(2) (1886) I. L. R. 12 Cal. 568.

(3) (1888) 13 Cal. L. R. 212.

(4) (1898) I. L. R. 20 Cal. 870.

(5) (1895) I. L. R. 23 Cal. 194.

(6) (1895) I. L. R. 18 Mad. 394.

(7) (1913) I. L. R. 38 Mad. 304.

(8) (1918) 50 Indian Cases 672.

(9) (1918) I. L. R. 41 All. 116.

(10) (1916) 15 All. L. J. 237.

1921

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1921

—
GIRDHARI
v.
THE CROWN.

evidence. The petitioner was convicted and sentenced to pay a fine of Rs. 50 or to undergo one month's rigorous imprisonment. The conviction and sentence were affirmed on appeal by the District Magistrate.

On revision to this Court it is contended that the trial of the applicant was vitiated owing to the change of Magistrates in the constitution of the Bench which tried him for the offence; and that the conviction and sentence should in consequence be set aside.

Now there is ample authority for holding that all criminal cases should be decided by Magistrates, who have heard the whole of the evidence, and that section 350 of the Criminal Procedure Code does not apply to cases tried by Benches of Magistrates—*vide Sufferuddin v. Ibrahim* (1) *Ram Sunder De v. Rajab Ali* (2), *Shumbu Nath v. Ram Kamal* (3), *Hardwar Sing v. Khega Ojha* (4), *Damri Thakur v. Bhowani-Sahoo* (5), *Queen-Empress v. Basappa* (6), *Re Subramania Ayyar* (7), *Nga Paik v. Nga Saw* (8), *Emperor v. Mathura* (9), and *Abdul Aziz v. Emperor* (10).

Following the above authorities from which I see no reason to differ I set aside the conviction, and direct that the fine, if paid, be refunded and a new trial held in the case.

Revision accepted.

(1) (1878) I. L. R. 3 Cal. 754.

(2) (1886) I. L. R. 12 Cal. 558.

(3) (1883) 13 Cal. L. R. 212.

(4) (1893) I. L. R. 20 Cal. 370.

(5) (1885) I. L. R. 2 Cal. 194.

(6) (1895) I. L. R. 18 Mad. 394.

(7) (1913) I. L. R. 38 Mad. 304.

(8) (1918) 10 Indian Cases 672.

(9) (1918) I. L. R. 41 All. 116.

(10) (1916) 15 All. L. J. 237.