

REVISIONAL CRIMINAL.

Before Mr. Justice Harrison.

KALLU—Petitioner,

versus

THE CROWN—Respondent.

Criminal Revision No. 745 of 1921.

Criminal Procedure Code, Act V of 1898, sections 435 and 438—Jurisdiction—Whether the Sessions Judge has power to refer to the High Court the judgment of a District Magistrate made in the exercise of his appellate jurisdiction.

Held, that a District Magistrate when exercising appellate jurisdiction is an inferior Criminal Court to the Sessions Judge within the meaning of section 435 of the Code of Criminal Procedure. A Sessions Judge has therefore power under section 438 to refer to the High Court the judgment of a District Magistrate made in the exercise of his appellate jurisdiction.

Shib Das v. The Crown (1), followed.

Khamir Sheikh v. Emperor (2), dissented from.

Jalloo v. King-Emperor (3), *Queen-Empress v. Karamdi* (4), *Opendro Nath v. Dukhini Bewa* (5), *Queen-Empress v. Laskari* (6), *Mobin Kristo v. Bussick Lall* (7), and *Queen-Empress v. Jahandi* (8), referred to and discussed.

Case reported by F. W. Skemp, Esquire, Sessions Judge, Karnal, with his No. 796 of 9th May 1921.

RAJ KRISHEN, for Petitioner.

KHILINDA RAM, Public Prosecutor, for Respondent.

The accused, on conviction by *Lala Iachhu Mal, Tahsildar*, Karnal, exercising the powers of a Magistrate of the 2nd class in the Karnal District, was sentenced, by order, dated the 31st January 1921, under section 403 of the Indian Penal Code, to two months' rigorous imprisonment and to pay a fine of Rs. 50;

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| <p>(1) 335 P. L. R. 1913.</p> <p>(2) (1910) 14 Cal. W. N. CCV1.</p> <p>(3) 15 P. R. (Cr.) 1904.</p> <p>(4) (1895) I. L. R. 28 Cal. 253.</p> | <p>(5) (1886) I. L. R. 12 Cal. 473 (F. B.).</p> <p>(6) (.885) I. L. R. 7 All. 853 (F. B.).</p> <p>(7) (1884) I. L. R. 10 Cal. 268.</p> <p>(8) (1895) I. L. R. 23 Cal. 249.</p> |
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1921

Dec. 5.

1921

KALLU

v.

THE CROWN.

in default of payment of fine to undergo further rigorous imprisonment for a month (fine has been realised).

The proceedings are forwarded for revision on the following grounds :—

This is a petition for revision of an order of the District Magistrate, Karnal, sitting as a Court of appeal.

I entertain some doubt whether a Sessions Judge is competent to entertain such a petition. The question is whether the District Magistrate *sitting as a Court of appeal* is an inferior Criminal Court to the Sessions Court.

Page 906 of Sohni's Criminal Procedure Code, 9th Edition, contains a note in the following terms :—

“ A Sessions Judge has no power to refer to the High Court the judgment of a District Magistrate given in the exercise of his appellate jurisdiction as he is not then an inferior Criminal Court to the Sessions Judge within the meaning of section 435—*Khamir Sheikh v. Emperor* (1).”

The ruling relied upon is not accessible to me. On the other hand the petitioner's *Vakil* cited *Shib Das v. The Crown* (2) where a revision of a District Magistrate's appellate order was accepted on the recommendation of the Sessions Judge without this point of law being raised. He also referred to *Jaloo v. King-Emperor*, (3), *Queen-Empress v. Karamdi* (4), and some other rulings not relevant. I have also referred to *Opendro Nath v. Dukhini Bewa* (5) and *Queen-Empress v. Laskari* (6). *Opendro Nath v. Dukhini Bewa* (5) says that a Sessions Court is superior to all other local Criminal Courts; while in *Queen-Empress v. Laskari* (6), Straight, J., held that the District Magistrate was undoubtedly inferior to the Court of Session and suggested that inferior was substituted for subordinate in the corresponding section of the earlier Code as it has been held that the District Magistrate was not subordinate to the Sessions Court. None of these

(1) (1910) 14 Cal. W. N. CCVI.

(4) (1895) I. L. R. 23 Cal. 250.

(2) 935 P. L. R. 1913.

(5) (1886) I. L. R. 12 Cal. 473 (F. B.)

(3) 15 P. R. (Cr.) 1904.

(6) (1885) I. L. R. 7 All. 653 (F. B.)

rulings however specifically deals with the case of a District Magistrate sitting as a Court of appeal and I would welcome a pronouncement by the Lahore High Court on this point.

Coming to the facts, the present petitioner was convicted by *Lala Lachhu Mal*, Magistrate, 2nd class, under section 403, Indian Penal Code, and sentenced to two months' rigorous imprisonment and Rs. 50 fine. This sentence was upheld on appeal by the District Magistrate. It was found by *Lala Lachhu Mal* that the complainant *Banarsi Das* owned a mare which disappeared while grazing. The following day he was told by *Munshi* that he had seen *Sardar Ali* riding the mare, and *Kallu*, the petitioner, walking alongside. After some time he took a *panchayat* to *Kallu's* village and *Kallu* promised to return the mare. At a second *panchayat* *Kallu* demanded and received Rs. 50 as *Bhunga*. Ultimately he defaulted and about a month and a half after the mare disappeared the complainant reported the matter to the police and the same day lodged a petition.

The trying Magistrate discharged *Sardar Ali*, who is the son of a *Zaildar*, and in his order of discharge he said that the evidence of *Munshi* was unreliable. Yet both he and the District Magistrate have relied upon *Munshi* against *Kallu*.

This witness *Munshi* was not mentioned in the report the complainant made to the police or in his complaint or in his statement under section 203, Criminal Procedure Code. In my opinion *Munshi's* evidence must be entirely rejected.

Hence the only remaining evidence against *Kallu* is that of four witnesses who narrate what took place at the *panchayat* in *Kallu's* village. Two of them also testify against *Sardar Ali*, but the trying Magistrate rejected their testimony against him. One of the witnesses *Nizam Khan* deposed that *Kallu* under pressure said *ah roz bad akar jaisa kaisa hoga waisa kar dunga*. The other three witnesses (of whom *Suraj* is a remote relative of the complainant) say that *Kallu* at first denied his guilt then *man liya*. This is all.

1921

KALLU

v.

THE CROWN.

1921

KALLU
v.
THE CROWN.

In my opinion the evidence on the record is quite insufficient to justify conviction and I recommend that the conviction be set aside and Kallu who is on bail be discharged from his security.

HARRISON, J. — Under section 438, Criminal Procedure Code, the Sessions Judge of Karnal has referred to this Court two orders of the District Magistrate passed in the exercise of his appellate jurisdiction, and in the order of reference he has asked for a decision as to whether he has jurisdiction to do so and whether under the circumstances the words “any inferior Criminal Court” in section 435 include the Court of a District Magistrate. In *Khamir Sheikh v. Emperor* (1) a decision of a Division Bench is reported to the effect that the District Magistrate when exercising appellate jurisdiction is not an inferior criminal Court to the Sessions Judge. The only published Punjab case on the subject appears to be *Shib Das v. The Crown* (2). In this the Sessions Judge reported an order passed by the District Magistrate, acting as a Court of appeal, and the question of his right to do so was not raised, nor discussed, but the Judge dealt with the report and passed orders on it. The word used in section 435, Criminal Procedure Code, was formerly “subordinate” and for this the word “inferior” was substituted, the reason being as explained in *Queen-Empress v. Laskari* (3) that in some matters the District Magistrate is not subordinate to the Sessions Judge and in consequence of this amendment there has never been any question of the power of the Sessions Judge under section 435 to deal with an order passed by the District Magistrate in the exercise of his ordinary original jurisdiction. The meaning of the word “inferior” has been discussed and explained in *Jaloo v. King-Emperor* (4) and in a Full Bench decision of the Calcutta High Court, *Opendro Nath v. Dukhini Bewa* (5). To quote from the Punjab ruling:—

“Inferiority is different from subordination as laid down in section 17 of the Code, though under section 195 the District

(1) (1910) 14 Cal. W. N. COVI.

(2) 385 P. L. R. 1913.

(3) (1885) I. L. R. 7 All. 853 (F. B).

(4) 15 P. R. (Cr.) 1964.

(5) (1886) I. L. R. 12 Cal. 473 (F. B).

Magistrate is in certain cases subordinate also to the Sessions Judge. It is true that under section 435 the District Magistrate has concurrent jurisdiction with the Sessions Judge in matters of revision, but the District Magistrate's powers are limited to Courts in subordination to him, whereas the Sessions Judge's jurisdiction may extend over more than one district and over Assistant Sessions Judges, if there are any. The language of section 437 also shows that the District Magistrate may be ordered by the Sessions Judge to make the further inquiry directed under that section. Thus there can be no question of the District Magistrate's Court being one inferior to that of the Sessions Judge except with reference to those special cases where their powers are declared equal by the Code."

The powers of the District Magistrate and the Sessions Judge as Courts of Appeal or not, and have not been declared to be, equal.

In *Opendro Nath v. Dukhini Bewa* (1) the following passage occurs:—

"If we take the ordinary meaning of the word, there can be no question but that all subordinates are inferior to the authority to which they are subordinate; although inferiors are not necessarily subordinates. So within the territorial jurisdiction of a High Court all other Courts are inferior to it, in a Sessions Division, the Sessions Court is superior to all other local Criminal Courts, and all such other Courts are inferior to it, and in a district all other Magistrates are by section 17 of the Code subordinate to the Magistrate of the District, and consequently inferior to him: and inferior as much for the purpose of section 435 as in any other respect.

The High Court can under that section call for the record of any proceeding before any Criminal Court within the local limits of its jurisdiction, a Court of Sessions may do so as regards every other Criminal Court in the Sessions Division; and the Magistrate of the District can do the same as regards every other Magistrate's Court within his district."

This view hardly coincides with that taken in *Khamir Sheikh v. Emperor* (2) and it appears to me to give the natural and obvious interpretation to be placed on the word "inferior." The District Magistrate is in no possible sense of the word superior to the Sessions Judge, and if authority be needed this has been very clearly explained in *Queen-Empress v. Jahandi* (3) and *Queen-Empress v. Karamdi* (4). He

(1) (1886) I. L. R. 12 Cal. 473 (F. B.)

(2) (1910) 14 Cal. W. N. CCVI.

(3) (1895) I. L. R. 23 Cal. 249.

(4) (1895) I. L. R. 23 Cal. 250.

1921

KALLU
V.
THE CROWN.

is certainly not a Court of co-ordinate jurisdiction except with reference to those special cases where his powers are declared by the Code to be similar to, though more limited than, those of the Sessions Judge. The only possible conclusion therefore is that he is inferior. The opposite view is based on more or less the same reasoning as that which led the Division Bench of the Calcutta High Court in *Mobin K'isto v. Russick Lal* (1) to hold that a first class Magistrate is not inferior to a District Magistrate, a finding which was considered and dissented from in the Full Bench ruling *Opindro Nath v. Dukhini Beva* (2). The words "inferior" and "subordinate" have different meanings, and the only possible reason for holding that the District Magistrate *qua* an Appellate Court is not inferior to the Sessions Judge is that he is not subordinate in that particular capacity. This reason is, I think, unsound and is based on a confusion of ideas leading to the treatment of both words as identical and interchangeable.

Following, therefore, the procedure observed in *Shiv Das v. The Crown* (3), I deal with the cases reported by the Sessions Judge.

The facts are clearly stated in the order of reference in revision No. 745. The District Magistrate has upheld the conviction of one Kallu who was sent up for trial together with Sardar Ali in spite of the fact that the principal witness against Kallu was rejected by the trial Magistrate when dealing with the case of the co-accused. Without the evidence of this witness the remaining evidence on the record is quite insufficient to justify a conviction. I, therefore, accept the application for revision and acquit Kallu, accused.

Revision accepted.

(1) (1884) I. L. R., 10 Cal. 268.

(2) (1886) I. L. R. 12 Cal. 473 (F. B.).

(3) 335 P. L. R. 1913.