

**REVISIONAL CRIMINAL.**

*Before Mr. Justice Moti Sagar.*

THE CROWN—Petitioner,

*versus*

JAWALI AND SRI RAM—Respondents.

**Criminal Revision No. 1491 of 1923.**

*Criminal Procedure Code, Act V of 1898, section 562—  
whether second class Magistrate can pass orders under the  
section.*

*Held*, that a Magistrate of the second class is not competent to pass orders under section 562 of the Code of Criminal Procedure himself, but if he is of opinion that the powers conferred by section 562 ought to be exercised, he should record his opinion to that effect, and submit the case to a Magistrate of the first class or a Sub-Divisional Magistrate for orders.

*Case reported by F. L. Brayne, Esquire, District Magistrate, Gurgaon, with his No. 36 of 1923.*

NEMO, for Petitioner.

SAIN DAS, for Respondents.

The accused on conviction by *Rai Sahib Lala Dhanpat Rai*, exercising the powers of a Magistrate of the 2nd class in the Gurgaon District, were sentenced by order, dated 19th May 1923, under section 562 of the Criminal Procedure Code to give two sureties in the sum of Rs. 200 each to be of good behaviour for one year.

*The facts of this case are as follows:—*

The accused entered Chandan complainant's *chau-bara* in broad daylight and stole a wooden box containing ornaments and clothes worth Rs. 156. The box was subsequently recovered by the police intact and the accused were challaned in the Court of the Magistrate, 2nd class, Rewari. The Magistrate found both the accused guilty and gave the sentence as noted above under section 562, Criminal Procedure Code.

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

1. That the order passed by the Magistrate, 2nd class, Rewari, is illegal, the punishment awarded not being permissible under section 454, Indian Penal Code.

2. That a Magistrate of 2nd class is not competent to award sentence under section 562, Criminal Procedure Code. Under the *proviso* to this section he can only submit the proceedings with his opinion for the orders of a competent authority.

3. That the offence committed by the accused is not of a trivial nature, the punishment awarded under section 454, Indian Penal Code, being ordinarily three years and fine.

4. That the antecedents of the accused who are aged about 17 do not justify the sentence.

For these reasons I submit the file of the case to the High Court with the recommendation that the order be set aside and the Magistrate called upon to pass a fresh sentence in accordance with law.

MOTI SAGAR J.—I agree with the learned District Magistrate in holding that it was incompetent to a 2nd class Magistrate to have passed orders under section 562 of the Criminal Procedure Code himself, and that he should have submitted the case to a 1st class Magistrate or a Sub-Divisional Magistrate for orders with his report if he was of opinion that the case was a fit one for the exercise of powers under that section. I set aside the order and remand the case to the Magistrate concerned with a direction that he should pass fresh orders in accordance with law keeping in view the provisions of section 562 in the new Criminal Procedure Code.

A. K.

*Case remanded.*

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