

that Code the order for payment of compensation had to be made by the order of discharge. The law has now been amended, and by the present section 250 it is only the order calling upon the complainant to show cause why he should not pay compensation which has to be contained in the order of discharge. The order for payment of compensation was necessarily a subsequent order. The Magistrate followed the correct procedure, and I decline to interfere. Let the records be returned.

A. N. C.

Revision dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Broadway.

BANWARI AND OTHERS—Petitioners

versus

THE CROWN—Respondent.

Criminal Revision No. 1443 of 1925.

Criminal Procedure Code, Act V of 1898, sections 15, 16 and 350A—Bench of Magistrates—Quorum of—only one Magistrate present throughout—Proceedings quashed.

A prosecution extending into several hearings was presided over by a Bench of Honorary Magistrates (consisting of three) only one of whom was present throughout.

Held, that as the *quorum* of the Bench consisted of *two*, the trial was bad under section 350A of the Code of Criminal Procedure.

Application for revision of the order of Rai Sahib Lala Labhu Ram, District Magistrate, Rohtak, dated the 20th June 1925, affirming that of the Bench of Honorary Magistrates, 2nd class, at Beri, tahsil Jhajjar, district Rohtak, dated the 26th May 1925, convicting the petitioners.

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SHAMAIR CHAND, for Petitioners

Nemo, for Respondent.

JUDGMENT.

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BANWARI

v.

THE CROWN.

BROADWAY J.—An offence under section 323, Indian Penal Code, said to have been committed by Banwari and others, was tried by a Bench of Honorary Magistrates and resulted in a conviction of the persons so tried. Their appeals having been rejected by the District Magistrate they have come up to this Court under section 439, Criminal Procedure Code, through Mr. Shamair Chand.

It has been urged that the trial has been vitiated by the fact that the provisions of section 350-A, Criminal Procedure Code, have been lost sight of. That section is to the effect that “no order or judgment of a Bench of Magistrates shall be invalid by reason only of a change having occurred in the constitution of the Bench in any case in which the Bench by which such order or judgment is passed is duly constituted under sections 15 and 16, and the Magistrates constituting the same have been present on the Bench throughout the proceedings.”

In the present case the trial opened on the 17th of March 1925 when three members were present whom I will designate as A, B and C. The next hearing was on the 24th of March 1925 at which A and B were present. The third hearing was on the 14th of April 1925 when B and C were present. B and C were also present at the hearing on the 29th of April 1925. At the two subsequent hearings all three A, B and C were present.

From the above it will be seen that of the three Magistrates A, B and C,—B alone has been present throughout the proceedings. The quorum of the

Bench consisted of two, and in these circumstances the learned counsel's contention must prevail, and it must be held that the trial was bad as contravening the provisions of section 350-A, Criminal Procedure Code.

I therefore accept this petition and set aside the conviction and the sentences. The District Magistrate will send this case to some Magistrate having jurisdiction, with the direction that it should be disposed of as quickly as possible.

N. F. E.

*Revision accepted ;
Case remanded..*

APPELLATE CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Eforde.

SHAM DAS AND ANOTHER (DEFENDANTS), Appellants.

versus

Mst. MOOLO BAI AND OTHERS
(PLAINTIFFS). NAU NIHAL Respondents.
KISHEN (DEFENDANT)

Civil Appeal No. 2487 of 1921.

Custom—Succession—daughters or collaterals—Aroras of Muzaffargarh—uncontested instances of daughters' exclusion—value of, as proof of custom—Riwaj-i-am—entries in—ordinarily refer only to ancestral property.

In holding that there was no valid custom amongst Aroras of Muzaffargarh town under which the daughters of a sonless proprietor of certain houses and of ancestral property consisting of shops and agricultural land would be excluded by collaterals, the trial Court relied upon findings that the main occupation of the family was not agriculture but trade, and that they were not members of a village community; instances of daughters' uncontested exclusion from inheritance by collaterals were disregarded as being of little value. On appeal to the High Court it was found (1) that the family

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Dec. 23.