

REVISIONAL CRIMINAL.*Before Mr. Justice Broadway.***BABU RAM AND OTHERS, Petitioners***versus***THE CROWN, Respondent.****Criminal Revision No. 1229 of 1926.**

1926

Nov. 15.

Appeal (Criminal)—course of—Trial held by a Magistrate who started with Second class powers but possessed First class powers at time of conclusion of the trial—Appeal—whether to Sessions Judge or District Magistrate—Criminal Procedure Code, Act V of 1898, sections 407, 408.

Held, that the petitioners having been convicted on a trial held by a Magistrate who started with Second class powers but at the time when he concluded the trial was possessed of First class powers, their appeal lay to the Sessions Court under section 408 of the Code of Criminal Procedure.

Sheobhanjan Singh v. The Emperor (1), followed.

King-Emperor v. Nagpaw (2), dissented from.

Application for revision of the order of Lt.-Col. B. O. Roe, Sessions Judge, Jullundur, dated the 14th June, 1926, returning the appeal for presentation to the District Magistrate.

T. D. KHANNA, for Petitioners.

Nemo, for Respondent.

JUDGMENT.

BROADWAY J.—The petitioners in this case have been convicted of offences under sections 325 and 323, Indian Penal Code. They preferred an appeal to the learned Sessions Judge who returned the same to the Advocate of the appellants directing him to lodge it before the District Magistrate. He passed this order in the following circumstances :—On the 3rd May 1924 when the case was started the Magistrate had only second class powers. For some reasons or other the proceedings were protracted and the case was ultimately decided on the 29th March 1925. During the pendency of these proceedings the Magistrate was given

(1) (1925) A. I. R. (Pat.) 472. (2) (1908) 4 L. B. R. 239.

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first class powers by a Notification dated the 6th August 1925. In these circumstances the learned Sessions Judge, apparently following the decision of the Lower Burma Chief Court in *King Emperor v. Nag-paw* (1) held that the appeal was not cognizable by him but by the learned District Magistrate. Against this decision the petitioners have come up to this Court on revision through Mr. T. D. Khanna who has urged that the view taken by the learned Sessions Judge is erroneous, and that when a trial is held by a second class Magistrate and is completed by the same Magistrate after he has been given first class powers the appeal would lie to the Sessions Judge. Under section 407 (1), Criminal Procedure Code, any person *convicted* on a trial held by any Magistrate of the 2nd or 3rd class may appeal to the District Magistrate, and under Section 408 any person convicted on a trial held by * * * a Magistrate of the first class may appeal to the Court of Session. In the present case the petitioners were *convicted* on a trial held by a Magistrate who started with second class powers but at the time when he concluded the trial was possessed of first class powers. In these circumstances I am of opinion that the appeal lay to the Sessions Court, and in this view I am supported by *Sheobhanjan Singh and others v. The Emperor* (2), a case decided by Mullick and Bucknill JJ. of the Patna High Court. There the facts were very similar to those of the present case. The trial had been commenced by a second class Magistrate who had been given first class powers a short time before the trial concluded. I therefore hold that the appeal had been properly filed in the Sessions Court, and accepting this petition I direct that the appeal be re-admitted in that Court and be disposed of in accordance with law.

A. N. C.

Revision accepted.

(1) (1908) 4 L. B. R. 239.

(2) (1925) A. I. R. (Pat.) 472.