

REVISIONAL CRIMINAL.

Before Mr. Justice Fforde and Mr. Justice Addison.

THE CROWN, Petitioner

versus

BAKHSHAN, Respondent.

Criminal Revision No. 640 of 1926.

*Criminal Procedure Code, Act V of 1898, section 562—
First offender—Power of second class Magistrates.*

Held, that a Magistrate of the second class in the Punjab is competent to pass orders under section 562 of the Code of Criminal Procedure (*vide* Punjab Government Notification No. 431 (Home), dated 18th April 1910).

Crown v. Jawali (1), overruled.

Case reported by F. A. Connor, Esquire, District Magistrate, Multan, with his No. 1697 of 20th April 1926.

R. C. SONI, for Government Advocate, for Petitioner.

Nemo, for Respondent.

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

That the Magistrate, 2nd class, was not competent to award a sentence under section 562, Criminal Procedure Code. On the analogy of *Crown v. Jawali* (1), I submit the file to the High Court with the recommendation that the order of the Magistrate be set aside and the case remanded for a fresh order to be passed in accordance with law.

ORDER OF THE HIGH COURT.

FFORDE J.

FFORDE J.—The facts out of which this revision has arisen may be stated shortly:—

One Bakhshan was on the 25th of February 1926, convicted of theft under the provisions of section 379

of the Indian Penal Code by a Magistrate invested with second class powers. The Magistrate applying the provisions of section 562 of the Code of Criminal Procedure directed that the offender be released on his entering into a bond with surety in the sum of Rs. 200, to appear and receive sentence when called upon during a period of six months, and in the meantime to keep the peace and be of good behaviour.

The District Magistrate has, under the provisions of section 438 of the Code of Criminal Procedure, reported the matter to this Court, with a recommendation that the order of the trial Magistrate be set aside, and the case remanded for a fresh order to be passed in accordance with law. The learned District Magistrate has adopted this course by reason of a judgment of Moti Sagar J. in *Crown v. Jawali and Sri Ram* (1). The learned Judge in that case held that a second class Magistrate was not competent to act under the provisions of section 562, and that his proper course would have been to have submitted the case to a first class Magistrate, or a Sub-Divisional Magistrate, for orders with his report, if he was of the opinion that the case was a fit one for the exercise of powers under that section ; and he accordingly remanded the case to the trial Magistrate to take the proper steps. The learned Judge in coming to this conclusion was not informed that Magistrates of the second class have been specially empowered by the Local Government to exercise the powers conferred by section 562 of the Code of Criminal Procedure. This is a matter upon which the District Magistrate in that case should have satisfied himself before taking steps under section 438 of the

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Criminal Procedure Code. The notification in question is contained in part 1 of the *Punjab Government Gazette* of April 22nd, 1910, at page 303. The notification itself which is dated the 18th of April 1910, and numbered 431 (Home) reads as follows:—

“The Lieutenant-Governor of the Punjab is hereby pleased to invest all Magistrates of the 2nd class in the Punjab with the power to exercise all or any of the powers conferred upon a Court by the provisions of section 562 of the Code of Criminal Procedure, 1898.”

As it is perfectly clear from this notification that Magistrates of the 2nd class are competent to invoke the provisions of section 562 of the Code of Criminal Procedure, it follows that in the present case the trial Magistrate has acted with perfect propriety and in accordance with law. His order therefore must stand, and the recommendation of the District Magistrate be refused.

ADDISON J.

ADDISON, J.—I agree.

N. F. E.

Revision dismissed.
