

**REVISIONAL CRIMINAL.**

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*Before Harrison J.*

BHOLA RAM AND OTHERS—Petitioners

*versus*

THE CROWN—Respondent.

1931

Nov. 19.

Criminal Revision No. 866 of 1931.

*Criminal Procedure Code, Act V of 1898, section 556. "Personally interested"—Order for commitment for trial passed by Magistrate who had himself attended identification parade—Magistrate called as a witness at trial—whether commitment proceedings affected.*

The accused were committed for trial on charges of dacoity, etc. by a Magistrate who had, before the commitment proceedings began in his Court, himself attended an identification parade at which the accused had been identified. The committing Magistrate had, therefore, been called as a witness for the prosecution in the trial.

*Held*, that no grounds had been disclosed why the case should not proceed and the evidence of the Magistrate, who had not been shewn to have any personal interest, be taken in due course.

*Ram Prasad v. Emperor (1)*, referred to.

*King Emperor v. Maung Lat (2)*, distinguished.

*Case reported by Mr. G. S. Mongia, Additional Sessions Judge, Lahore, with his No. 1303 of 11th July 1931.*

*Nemo*, for Petitioners.

S. L. PURI, for Government Advocate, for Respondent.

*The report of the Additional Sessions Judge, Lahore :*

The accused were committed by *Lala Krishan Lal* exercising the powers of a Magistrate of the 1st

(1) 1927 A. I. R. (Owdh) 369.

(2) (1904) 1 Cr. L. J. 477.

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Class in the Lahore District by order, dated the 15th June, 1931, under Section 396 of the Indian Penal Code, to Sessions for trial.

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

The accused in this case as well as in the connected cases (which are also being submitted for revision) have been committed by a Magistrate of the 1st Class to stand their trial in the Court of Sessions under sections 396 and 397, Indian Penal Code, etc. The Committing Magistrate himself is to appear as an important prosecution witness for the Crown and against the accused. It appears that before the commitment proceedings began in his Court he held an identification parade at which the accused were identified by some persons. He was thus himself an important witness in the case but his statement has not so far been recorded and the accused have had no opportunity in the course of the commitment proceedings either to cross-examine him or to prepare their defence with reference to his evidence.

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

The question in this case is :—

Whether the commitment is vitiated by the fact that the Committing Magistrate himself attended an identification parade before the proceedings started in his Court and is himself an important witness at the trial for the prosecution and against the accused?.

*[The remainder of the order is not required for the purpose of this report except as follows, Ed.]*

*Recommendation.*

It is humbly requested that the commitment may be quashed under section 439 of the Code of Criminal

Procedure and fresh proceedings ordered before some other Magistrate.

HARRISON J.—The lengthy order of reference deals with a position wholly different from that, which exists in this case. All the rulings quoted in the first five pages are irrelevant. Of those quoted in the last two, *Ram Prasad v. Emperor* (1) bears some resemblance to the present case, *King Emperor v. Maung Lat* (2) bears none. The position of a committing magistrate, as frequently explained, is wholly different from that of a magistrate trying a case, and anyhow in these proceedings the magistrate cannot be said to have any personal interest whatever. I cannot agree in the very low opinion expressed by the Additional Sessions Judge of any magistrate who has to appear in the witness box to testify to his own official acts. I do not believe that such a magistrate would be influenced by the highly improper desire to make his evidence more convincing than it naturally was, and would try to achieve this by improving on the facts and giving more than a simple straightforward narrative of events. There is no sort of reason why the case should not proceed and the evidence of the magistrate be taken in due course and as soon as possible. The accused will have ample opportunity to cross-examine in the Sessions Court. Much valuable time has already been wasted.

N. F. E.

*Revision dismissed.*

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