

will in accordance with the provisions of the Indian Succession Act and to try the case on the merits and accordingly to give judgment either granting or refusing to grant letters of administration with a copy of the copy of the will on the record annexed, as the facts before him may justify. The costs of the proceedings up to the present will be costs in the cause.

A. N. K.

*Appeal accepted.*

**REVISIONAL CRIMINAL.**

*Before Blacker J.*

GIAN SINGH (ACCUSED) Petitioner,

*versus*

AMAR SINGH,—Respondent.

**Criminal Revision No. 1623 of 1937.**

*Criminal Procedure Code (Act V of 1898), SS. 366 (1) and (3), 369, 526 (8) and 537 — Transfer — Intimation of intention to make an application — when to be made — Trial — when over.*

The trial Magistrate fixed a date for arguments after the defence was closed and then extended the date. On the second date the accused was absent and the Magistrate wrote out the judgment convicting the accused and adding a sentence at the end that as he was under orders of transfer he would leave the judgment to be pronounced by his successor. He then signed and dated it. After this counsel for the petitioner appeared and put in an application for transfer. It was contended (i) that the Magistrate was bound to adjourn the case when it was intimated to him that the accused intended to make an application for transfer and that his not doing so vitiated the whole proceedings; (ii) that the successor in office of the Magistrate could not pronounce the order without giving the accused an opportunity to claim a *de novo* trial.

*Held*, that the intimation which is contemplated under section 526 (8) of the Act must be made before the close of

1937

RAM LAL  
v.  
CHAMAN DASS.  
MONROE J.

1938

Jan. 31.

1938

GIAN SINGH  
v.  
AMAR SINGH.

the defence and in the present case it was made not only after the close of the defence but after the judgment had been written and signed.

*Held also*, that as soon as the Magistrate had signed the judgment he had delivered it within the meaning of section 366 (3) of the Act and the trial was over.

*Revision from the order of Mr. M. A. Soofi, Sessions Judge, Ludhiana, dated 10th November 1937, affirming the order of District Magistrate, Ludhiana, dated 26th October 1937, ordering the accused to appear in Court and hear the judgment recorded by K. S. Choudhry Mehdi Ali, Magistrate, 1st Class, Ludhiana, before his transfer from that district.*

JHANDA SINGH, for Petitioner.

A. G. MAURICE for ADVOCATE-GENERAL and MEERA RAM, for Respondent.

BLACKER J.

BLACKER J.—The facts of this case are that the petitioner was being tried by a Magistrate in the Ludhiana district. On the 6th October 1937 the defence was closed and an order recorded that arguments would be heard on the 13th October. On the 8th October another order was recorded that as the Court would be on executive duty on the 13th the arguments would be heard on the 16th and that the accused and his pleader should be informed. On the 16th the accused was absent. The learned Magistrate then wrote out the judgment in the case convicting the petitioner and added a sentence at the end of it, "As the accused is not present to-day and I am under orders of transfer, I keep this judgment on the file and leave this for my successor to pronounce it when the accused appears in Court." He then signed it and dated it.

It appears from the record that after this the counsel for the petitioner appeared and put in an application for transfer.

GIAN SINGH  
v.  
AMAR SINGH.  
BLACKBURN J.

It is contended before me on revision that the trial Magistrate was bound to adjourn the case when it was intimated to him that the petitioner intended to make an application for transfer and that his not doing so has vitiated the whole proceedings. This argument is ill-founded as section 526 (8) clearly lays down that such intimation must be made before the defence closes its case. In the present instance, it was clearly made not only after the defence had closed its case but after the judgment had been written and signed.

It is further contended before me that the successor in office of this present Magistrate cannot pronounce an order written by him without giving the accused-petitioner an opportunity to claim a *de novo* trial. It is stated that he does not want a complete *de novo* trial but would be satisfied if his arguments were heard all over again. This contention is based on section 350 of the Criminal Procedure Code but there is no applicability of section 350 to this case and therefore the objection cannot succeed. According to the law as laid down in the Criminal Procedure Code, the case was over as soon as the judgment had been delivered. Section 366 does no doubt lay down that the judgment in every trial in any Criminal Court shall be pronounced, or the substance of such judgment shall be explained in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders. But sub-section (3) of the same section clearly lays down that no judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader, and it is further laid down that nothing in this section takes away the applicability of section

1938

GLIAN SINGH  
v.  
AMAR SINGH.  
BLACKER J.

537. It is significant that a different word is used in the third sub-section of this section from that used in the first sub-section. Sub-section (1) says that the judgment shall be "pronounced:" the third sub-section speaks about a judgment being "delivered". It appears to me that differentiation in language is intentional. No doubt if the accused is in Court, it is necessary to inform the accused by word of mouth what sentence is being passed upon him and therefore the word 'pronounced' is used, but if the judgment is delivered in the absence of the accused then it would be idle for the Magistrate to read out any part of his judgment to an empty Court. Furthermore even if the Magistrate does not "pronounce" his judgment, the section itself shows that this would at most be an irregularity curable by section 537. Moreover, section 369 lays down in very clear and unmistakable terms that no Court may alter or review its judgment except to correct a clerical error when once it has signed it. I have no doubt therefore that once the learned Magistrate Mr. Mehdi Ali had signed his judgment, he had delivered it within the meaning of section 366 (3) and the trial was then over. His action in putting it in a closed envelope for somebody else to pronounce was unnecessary and redundant. I, therefore, hold that the trial of the petitioner has been completed and that all that now remains is for judgment to be executed against him.

I accordingly dismiss the petition and send the papers back to the learned District Magistrate for further necessary action.

A. K. C.

*Petition dismissed.*