

duly carried out by at least the "receiver" of the deed of mortgage, that is the original mortgagee; and so far therefore as these proceedings were concerned, the foreclosure was good as regards the whole property covered by the mortgage deed.

We think therefore that the lower Appellate Court was wrong in dismissing the plaintiff Raj Chandra's suit as regards the 3 annas 10 gaudas, on the ground that he was not a party to the foreclosure proceedings; and in this view we reverse the judgment of the lower Appellate Court, and restore and affirm that of the first Court, with costs of this Court and of the lower Appellate Court.

Before Mr. Justice Markby and Mr. Justice Glover.

THE QUEEN v. NANDKUMAR BOSE AND OTHERS.\*

Act XXXI. of 1860, s. 26—Act XLV. of 1860, s. 188—Act XXV. of 1861, ss. 250, 251—Carrying Fire-arms without License—Disobedience to an Order promulgated by a Public Servant.

A Magistrate issued a notification that all persons desirous of carrying arms should take out a license enabling them to do so, under section 26 of Act XXXI. of 1860; and certain persons were, in consequence of his notification, arrested and brought before him, charged in a Police report with carrying arms without license. No summons or warrant had been applied for, or any complaint lodged before the Magistrate previous to the arrest of the prisoners. No charge in writing was framed as required under sections 250, 251 of the Criminal Procedure Code. No evidence was taken; but the prisoners admitted carrying the fire-arms. The Magistrate convicted them, under section 188 of the Indian Penal Code, of disobedience to an order duly promulgated by a public servant. There was no evidence that the disobedience would cause or tend to cause annoyance, obstruction, or injury to human life, health, or safety. *Held*, the convictions must be quashed. Necessity of observing the rules laid down in the Criminal Procedure Code remarked on.

THIS was a reference from the Officiating Sessions Judge of Backergunge, dated the 29th July 1869. The circumstances are set out in the order of Reference as follows :

2. "In the cases noted in the margin, it appears that the Police, under general orders from the Magistrate arrested and sent in certain persons as having possession of guns without licenses. The Magistrate took

- 1 Queen v. Nandkumar Bose and others  
2 Queen v. Moni Gomez and another.  
3 Queen v. Ram Chand Christian.

their statements and convicted them under section 188 of the Penal Code. No complaint or deposition proceeded the conviction.

3. In the case noted in the margin,\* the accused appears to have attended, of his own accord, after a warrant had issued; he was similarly convicted; and in the next case,† the

- \* Queen v. Rohandi Naya.  
† Queen v. Lashkar Mahomed.

accused was arrested on warrant, and convicted in the same manner.

\* Reference, under section 434 of the Code of Criminal Procedure, from the Officiating Sessions Judge of Backergunge, dated the 29th July 1869.

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4. In the case noted in the margin the accused was duly convicted after examination of witnesses.

5. In all these cases I think other illegalities of procedure or of law have occurred, and I beg to submit them for the consideration of the High Court. Two similar cases came before me in appeal, and I annulled the convictions, and I submit a copy of my decision in those cases.

6. In the cases noted in paragraph 2, it appears to me that the Police have, under the Magistrate's orders, acted illegally in arresting the persons carrying arms. The proper course was for them to apply for a warrant or summons.

7. In the cases noted in paragraphs 2 and 3, there appears to me to have been a defect in the procedure, as some complaint or information on oath was necessary before a case could be brought on for trial. Section 257 allows the Magistrate to issue a summons or warrant on complaint, and it is not till this has been done that section 235 can be brought into action; and I do not understand that section 68 absolutely allows the Magistrate to convict the accused or call on him to plead to a Police Report. On the above grounds, I consider the convictions to be illegal.

8. I believe the Magistrate was not justified in convicting the accused of disobedience to his notification dated September 1868. That notification (a copy of which is appended) was issued in consequence of the Government Resolution No. 4500, of 17th August 1868, in which it is directed that Magistrates shall insist upon licences being taken out before arms are carried. This is in effect that Magistrates are to enforce section 26, Act XXXI. of 1860. That section prescribes the penalty for going armed or carrying arms without a license, and I do not think any additional penalty is incurred, because the Magistrate issues an order to all persons to take out licenses. It seems to me that it would be as just to say that a Magistrate might, by notification, direct mukhtars to take out licenses, and then punish them under section 188 of the Penal Code for practising without licenses.

9. The subject is one of considerable importance in this district, because great exertions are being made to enforce the orders of Government; but I do not think the convictions in these cases are legal, and I beg to refer the cases for the orders of the High Court."

MARKBY, J.—I think that in these cases all the convictions were wrong. They were made under section 188 of the Indian Penal Code. In the first place there was a defect in procedure, because the Magistrate did not, as required by section 250, frame any charge in writing against the prisoners, or follow or comply with any of the requirements of sections 251 and 252; but not only is there a defect in procedure, but there is no doubt, as the Magistrate would himself have discovered, if he had followed the prescribed procedure and framed a specific charge, that there is no evidence to establish an offence under section 188. Section 188 only applies where a person knowing that an order has been promulgated by the proper authorities disobeys that order, and

such disobedience either causes or tends to cause any obstruction, annoyance, or injury to any one, or the risk of such obstruction, annoyance, or injury. Now, as far as I can see, there was no evidence that the carrying of arms by these persons was of that nature, and if their defence is true, it is clear that it was not of such a nature, as would make them punishable under section 188, because what they were carrying arms for, was the lawful purpose of destroying game, and there is not the slightest indication to show that in so doing they would cause, or were in the least likely to cause, injury or annoyance to any person. The proclamation issued by the Magistrate under the orders of Government may have been a very proper one, and under certain circumstances might have become a proper foundation to proceed under section 188, but for the reasons I have pointed out, it cannot be so in these cases. The conviction and sentences must therefore be quashed, and the fines, if any have been levied, must be returned to the parties.

GLOVER, J.—I am of the same opinion.

1869

QUEEN v.  
NANDYMA  
BOSE.

*Before Mr. Justice Glover and Mr. Justice Mitter.*

SHANTO TEORNI v. MRS. BELILIAS AND OTHERS.\*

1869  
Sept. 16.

*Charge of Theft—Police Enquiry and Order thereon—Counter Charge of bringing a False Complaint.*

S. T. brought a charge of theft against B, before a Magistrate. The case was made over to the Deputy Magistrate on whose suggestion the Magistrate ordered that there should be a Police enquiry. The Police Superintendent reported that, in his opinion, the charge was false, and that the plaintiff should be summoned for bringing a false charge; and the Magistrate, while declaring that he would not encourage charges of "false complaint," said, that the injured party might swear an information, if she chose. S. T. then petitioned to be allowed to call witnesses in support of her charge of theft, and objected to the Police proceedings. The Magistrate recorded the following order: "The case has been dismissed, and the accused, Mrs. B., has received permission to prosecute the woman, S. T. for false charge; the present petition may be put in in defence in that case." *Held*, the order of the Magistrate must be quashed: (1) because he had no jurisdiction, the case having been made over to the Deputy Magistrate; (2) because the order above was not a judicial dismissal of the case. The case remanded for the trial of the original charge, as brought by S. T.

Baboo *Ambika Charan Bose* for prisoners.

GLOVER, J.—The Sessions Judge of Hooghly objects to a certain order passed by the Magistrate as illegal, and requests this Court, under section 434 of the Code of Criminal Procedure, to reverse that order.

It appears that a charge of theft was preferred to the Magistrate, and the case made over by him to Mr. Deputy Magistrate Godfrey. The Deputy Magistrate, after taking the deposition of the complainant, considered that there

\* Reference under section 434, Code of Criminal Procedure, from the Sessions Judge of Hooghly.