

1868  
 May. 5.

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*Before Mr. Justice Norman and Mr. Justice E. Jackson.*

IN RE THE QUEEN v. GOUR MOHAN SEN AND ANOTHER.\*

*Procedure—Jurisdiction of Collector under Stamp Act.*

An application was made to a Collector, under section 50, clause 2 of Act X. of 1862, to replace a damaged stamp by a new one. As it appeared that the stamp had been tampered with for fraudulent purposes, the Collector made over the parties to the Magistrate for trial.

*Held*, that the document not being given in evidence in any proceeding in Court, the Collector was not bound to proceed under sections 169, 171 of the Criminal Procedure Code.

THIS case was referred to the High Court, by the Judge of Backergunge, in the following letter :—

As directed in Circular No. 7, dated June 2nd, 1864, I have the honor to represent to the High Court, under section 434, Act XXV. of 1861, the illegality of the proceedings upon which the commitment, *in re The Queen v. Gour Mohan Sen and Dinabandu Chuckerbutty*, by the Officiating Magistrate, is based, and to solicit the High Court to annul the said proceedings, including the commitment.

2. On the 31st July 1868, one Gour Mohan Sen, mooktear, applied, on the part of one Dinabandu Chuckerbutty, to the Officiating Collector for a refund of the money-value of a certain 50 rupee stamp which had been spoilt. The applicant was directed to put in a petition on stamped paper, which he did on the 28th August. On the 31st idem Gour Mohan Sen was called on to produce the letter from Dinabandu Chuckerbutty, under which he stated he was authorized to make the application. This was done; and on the 13th October, the officiating Collector summoned Dinabandu Chuckerbutty to appear in his Court on the 31st idem. As on the day appointed, Dinabandu Chuckerbutty did not appear, the Officiating Collector passed the following order :—“Whereas Dinabandu Chuckerbutty has not come before the Court this day, on the date fixed in the summons, it is ordered that, in view to causing his attendance as required

\* Reference under section 434, Code of Criminal Procedure.

“by law, and in view to giving a proper order in the matter of  
 “this case of cheating, all the papers connected therewith, be  
 “forwarded to the Magistrate.” The case being thus transferred from the Officiating Collector to the Officiating Magistrate, who are one and the same person, the Officiating Magistrate took up the investigation, and on the 27th February 1869, committed Gour Mohan Sen and Dinabandu Chuckerbutty to take their trial at the Court of Sessions on the following charges, against both prisoners, under sections 465, 468, and 471, Indian Penal Code :—Against Gour Mohan Sen, under sections 417 and 511, Indian Penal Code, combined ; and against Dinabandu Chuckerbutty, under section 417 (and presumably 511) and 109, Indian Penal Code, combined. The accused have this day appeared before my Court, as the Court of Session, to take their trial on the above charges. A preliminary objection is taken by their Counsel as follows :—“ That the Officiating Magistrate has tried  
 “ this case, not under the authority vested in him by section 68,  
 “ Criminal Procedure Code, nor on complaint direct, nor on the  
 “ report of a Police Officer, but under the order of the Officiating  
 “ Collector, dated October 31st, 1868, and, therefore, apparently  
 “ under the provisions of section 171, Code of Criminal Procedure ; that according to section 171, the Officiating Collector was bound, after making preliminary enquiry, to name  
 “ the accused, and the particular charge or charges mentioned in  
 “ sections, 168, 169, or 170, Criminal Procedure Code, on which  
 “ they were to be tried, and the Officiating Magistrate could only  
 “ try such accused on such charge or charges and no other ; that  
 “ by his order of the 31st October 1868, the Officiating Collector  
 “ has not named Gour Mohan Sen as an accused person, but has  
 “ only named Dinabandu Chuckerbutty as such, and that he has  
 “ not recorded the charge or charges on which the accused is to  
 “ be tried, but has asked the Magistrate to give proper orders in  
 “ the matter of certain cheating, which is not an offence mentioned in any of the sections named in sections 168, 169, and  
 “ 170, Criminal Procedure Code, and that, therefore, the Officiating Magistrate, in committing the two prisoners, Gour Mohan Sen and Dinabandhu Chuckerbutty, to take their trial at the  
 “ Court of Session on charges framed under sections 465, 468,

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" 471, 417, 511, and 109, Indian Penal Code, has acted without jurisdiction, and his commitment should be quashed."

3. It appears to me that this contention is good. The Officiating Collector has not obeyed the provisions of section 171, Code of Criminal Procedure. In sending the case for investigation to the Magistrate, who has power to commit for trial the accused for the offence charged, he has neither specified the accused, nor the charge or charges mentioned in any of the sections 168, 169, or 170, Criminal Procedure Code, on which they are to be tried. As also the Officiating Magistrate has not noted the indefiniteness of the authority under which he was called upon to act, but has permitted himself to deal with the case as an ordinary one preferred on due complaint, and both determined who are the accused, and framed charges against them at will, I am of opinion that he has acted without jurisdiction, and that his proceedings must, therefore, be annulled, and this commitment quashed.

The judgment of the Court was delivered by

NORMAN, J.—As we understand this case, the prisoner Gour Mohan Sen, Mooktear, applied under section 50, clause 2 of Act X, of 1862, to the Collector for a new stamp in lieu of one supposed to have been spoilt within six months previously. It turned out, on enquiry, that the writing on the stamp had been tampered with for fraudulent purposes, and the prisoners were committed for using a forged document, under section 471. The Collector, to whom the stamp was tendered, was not sitting as a Court, Civil or Criminal, nor was the document given in evidence in any proceeding in any Court. Section 170 of the Code of Criminal Procedure has no application to the case, and our interference is quite unnecessary. But if section 170 had applied, the Judge would have done well to see if the Collector would not give the necessary sanction before he commenced the trial of the case, instead of sending up the proceedings to us under section 434.

The prisoners must be tried.

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