

## [FULL BENCH ]

*Before Sir Richard Couch, Kt. Chief Justice, Mr Justice Bayley Mr. Justice Kemp, Mr. Justice L. S. Jackson, and Mr. Justice Phear.*

1870  
Aug. 23,

THE QUEEN v. DHONA BHOOYA AND OTHERS.\*  
(Criminal Procedure Code) Act VIII of 1869, ss. 445A, 445C—Deputy  
Commissioner—Appeal.

The right of appeal to the High Court given by section 445 C of the Criminal Procedure Code to persons convicted on a trial held by an officer invested with the power described in section 445 A, is confined to cases in which the officer has exercised that power.

THIS case was referred to a Full Bench under the following orders by

L. S. JACKSON, J.—This is an appeal against a conviction before the Deputy Commissioner of Singbhoom. The prisoners having been found guilty of committing house-trespass by night, in order to the commission of theft, under section 357 of the Indian Penal Code, were sentenced respectively to one year and two year's rigorous imprisonment; in the latter case, corporal punishment was superadded. The appeal of the prisoners has been transmitted to this Court apparently on the ground that the Deputy Commissioner is an officer invested with the powers conferred by section 445A of the Code of Criminal Procedure amended by Act VIII of 1869.

There is nothing upon the record that I can find to show, that the particular Deputy Commissioner is invested with the powers in question, but, assuming that he is so, it appears to me for more than one reason that the appeal does not lie to the High Court. In the first place, in deciding the case of the prisoners, the Deputy Commissioner does not appear to have exercised those powers at all. The case was referred to him by a subordinate Magistrate, under section 277 of the Code of Criminal Procedure, which directs that when a subordinate "Magistrate shall consider

\*Criminal Appeal, No. 488 of 1870, from an order passed by the Deputy Commissioner of Singbhoom, dated the 6th July 1870,

“the offence established against the accused person to call for a more severe punishment than he is competent to adjudge, he shall record the finding and submit his proceedings to the Magistrate to whom he is subordinate, and such Magistrate shall pass such sentence or order in the case as he may deem proper, and as shall be according to law.” I apprehend, therefore, that this conviction was made by the Deputy Commissioner in the course of his ordinary, jurisdiction and duties as a Magistrate, and that, accordingly, the appeal would lie to the Court of Session.

But, even if it appeared that he had, in dealing with this case, exercised the jurisdiction specified in section 445A, I should still think that the appeal would not lie to the High Court. Section 445B. provides that “such chief officer shall try as a Court of Sessions, offences which, under the schedule hereto annexed, are triable by Court of Session only, and in such trials shall be guided by the rules contained in Chapter XXV of this Code ;” and immediately following that is the section 445C which declares that “any person convicted on a trial held by any officer invested with the power described in section 445A, may appeal to the High Court, and no appeal against such conviction shall lie to the Court of Session.”

The result of these provisions is that two procedures are provided for an officer exercising the powers in question. One in respect of offences which are triable by a Court of Session only, and in respect of which offences he is required to try the accused as a Court of Session ; but in regard to offences in which the Magistrate has concurrent jurisdiction with the Court of Session, apparently he has to try them as a Magistrate, but with the increased powers conferred by section 445A. I incline to think that the words “convicted on a trial” in section 445C, refer, if not to trials held by such officer as a Court of Session, at all events exclusively to cases in which he has exercised the powers conferred by section 445A ; and that where he has not acted in the exercise of those powers, but merely in the exercise of his jurisdiction as a Magistrate, the appeal will lie as in the case of other Magistrates to the Court of Session.

I am also of opinion that the word “trial” refers to the trials

1870

QUEEN  
v.  
DHONA  
BHOYA.

mentioned in the preceding clause and that "any person convicted on a trial" held by such officer, means on a trial held by the officer as a Court of Session.

It appears that, in other cases of like appeals, several Division Benches of the Court have entertained the appeal, and therefore it seems to be necessary to refer the point for the decision of a Full Bench. It is a matter of importance, because if the High Court be required to hear appeals from Magistrates who are invested with this jurisdiction, no matter what the nature of the offence or the amount of punishment may be, a very considerable amount of additional business will be thrown upon the Court.

MITTER, J.—I concur in the order of reference, but I express no opinion on the point referred.

The opinion of the Full Bench was delivered by

JACKSON, J.—We are of opinion that an appeal lies to the High Court, only when the conviction has been come to under the powers specified in section 445 A, Act VIII of 1869.

1870  
Aug. 24.

*Before Sir Richard Couch, Kt., Chief Justice, Mr. Justice Bayley, Mr. Justice Kemp, Mr. Justice L. S. Jackson, and Mr. Justice Phear.*

THE QUEEN v. NARAYAN NAIK AND ANOTHER.\*

*Code of Criminal Procedure (Act XXV of 1861), Chap. XI—Complaint, Irregularity in recording—Power of the Court of Session.*

9 B. L. R. 60.

A Court of Session is competent to proceed to the trial of a prisoner brought before it upon a charge by a Magistrate authorized to make a commitment, though the complaint to authorization be contained only in a letter from the Judge of that Court to the Magistrate of the district, sent with the record of the case notwithstanding an irregularity or defect or form in recording the complaint.

The complaint or authorization of the Court before which or against the authority of which, an offence mentioned in Chap. XI of the Code of Criminal Procedure is alleged to have been committed, is a sufficient warrant for commencement of criminal proceedings.

*The Queen v. Mahim Chandra Chuckerbutty* (1) overruled

\* Case called for from the Sessions Judge of Cuttack, on revision of the Jail Delivery Statements of his District for the month of May last.

(1) 3 B. L. R., A. Cr., 67.