

[APPELLATE CRIMINAL.]

Before Mr. Justice Kemp and Mr. Justice Glover.

THE QUEEN v. GIRISH CHANDRA GHOSE AND OTHERS.*

Criminal Procedure—Act XXV of 1861, ss. 66, 194, 249—Act VIII of 1869, s. 36.

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A Magistrate of a district, before whom a complaint had been made, without complying with the provisions of section 66, Act XXV of 1861 (1), sent the petition to be disposed of by a Deputy Magistrate; and when the Deputy Magistrate had proceeded to some extent with the case, the Magistrate took it up and tried it himself.

9 B.L.R. 148.
B.L.R. 21.

Held, that non-compliance with the provisions of section 66 of Act XXV of 1861 made the subsequent proceedings void.

Held also, that the Magistrate, having once sent the case to the Deputy Magistrate for trial, had no power to try the case himself, without formally recording a proceeding under section 36 of Act VIII of 1869 (2).

ONE Golab Ram charged the prisoners in this case before the Magistrate of Howrah with having extorted from her a sum of Rs. 100, by putting her in fear of an arrest under a warrant which they said had issued against her, and by threatening to have her brought up before the police as a suspicious character, and for having stolen property in her possession, and with having violently carried away another sum of Rs. 100 from her, while she was counting out the first sum of Rs. 100. On the back of the petition containing this charge, the Magistrate simply

(1) *Act XXV of 1861, section 66.*— plainant and] also by the Magis-
“When in order to the issuing of a summons or a warrant against any person for any offence, a complaint is made before the Magistrate of the district, or a Magistrate who is authorized to receive such complaint, without reference from the Magistrate of the district, such Magistrate shall examine the complainant. The examination shall be reduced into writing, and shall be signed by the com-
plainte. . . .”
(2) *Act VIII of 1869, section 36.*—
“The Magistrate of the district, or a Magistrate in charge of a division of a district, may respectively withdraw any criminal case from any Court subordinate to him, and may enquire into or try the case himself, or refer it for enquiry or trial to any other such Court competent to enquire into or try the same.”

*Miscellaneous Criminal Case, No. 94 of 1871.

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wrote an order, sending the complaint to Baboo Dwarka Nath Banerjee, Deputy Magistrate, to be disposed of according to law. The Deputy Magistrate took down the statement of the complainant in writing and "entertaining doubts as to the truth of the case, requested the Magistrate to direct a police enquiry into the matter, keeping the case on his file. The Magistrate accordingly ordered the police to make an enquiry and report on it. The police report was against the truth of the complaint. The District Superintendent, while transmitting the report to the Magistrate, recorded his opinion that, having himself sent for the complainant and examined her and her witnesses, he believed that, if a judicial investigation were held, the case would be proved. On receiving this report, the Magistrate summoned the accused, and proceeded to try the case himself, without recording any reason for withdrawing the trial of the case from the Deputy Magistrate to himself. One of the prisoners, Roshan Ali, appeared at a subsequent stage of the case, after the witnesses for the prosecution had been examined in the presence of the other prisoners. The Magistrate then recalled the witnesses, and asked them to identify Roshan Ali; and after that was done, the prisoner was allowed to cross-examine them.

The Magistrate, after taking evidence on both sides, convicted all the prisoners,—Roshan Ali of theft and extortion, Tamizuddin of extortion, Dingo Sirang and Alahabax of aiding and abetting extortion, and Girish Chandra of aiding and abetting the same as a public servant.

In appeal, the sessions Judge of Hooghly upheld the conviction of the Magistrate, but modified the sentence passed on Roshan Ali, by reducing one sentence, on the ground that the two offences of which he was convicted were supported by the same evidence.

On an application under section 404 of the Criminal Procedure Code, the High Court sent for the proceedings.

Baboo *Ambika Charan Bose* (with him Mr *M. L. Sandel*), now appeared for the prisoners and contended, *firstly*, that non-compliance with the provisions of section 66 of the Criminal Procedure Code, rendered the subsequent proceedings void, as

they had, therefore no legal initiation : the provisions of a penal law must be strictly construed. See *Dulali Bewa v. Bhuvan Shaha* (1) and *The Queen v. Mahim Chandra Chuckerbutty* (2).

Secondly, that the Magistrate was guilty of an irregularity in trying the case himself after having transferred it for trial to a Deputy Magistrate under section 67 of the Procedure Code, without recording a proceeding under section 36, see *Shanto Teorni v. Belilious* (3) and *In the matter of Kāba Kumār Banerjee* (4). *Thirdly*, he pointed out that the witnesses for the prosecution had not been examined *de novo* in the presence of Roshan Ali, and he contended that it was not sufficient to read over to the prisoner the examination already recorded, and only to allow him to cross-examine. See sections 194 and 249 of the Procedure Code ; this was a defect which could not be supplied. See *The Attorney-General of New South Wales v. Bertrand* (5), *The Queen v. Bishonath Pal* (6), *The Queen v. Abdool Setar* (7); *The Queen v. Kalee Thakoor* (8), and *The Queen v. Mahima Chandra Chuckerbutty* (9).

No one appeared to support the conviction.

GLOVER, J.—We are very unwilling to interfere with the orders passed in the Courts below, because the investigation appears to have been very carefully and thoroughly made, and the evidence is full and satisfactory. There can, however, be no doubt that the Magistrate has, in more than one particular, contravened the provisions of the Code of Criminal Procedure, and we have no choice but to quash his proceedings as illegal.

In the first place he did not record the complainant's statement before referring the case to the Deputy Magistrate, as he was bound to do under section 66 of the Code. There is an order on the back of the petition making over the case, but no examination of the complainant "reduced into writing, and signed by the complainant and the Magistrate." In the cases of

(1) 3 B. L. R., A. Cr., 53.

(2) *Id.*, 67.

(3) *Id.*, App., 151.

(4) 5 B. L. R., App., 45.

(5) 36 L. J., P. C., 51.

(6) 3 B. L. R., A. Cr., 20.

(7) 3 W. R., Cr., 36.

(8) 5 W. R., Cr., 65.

(9) 4 B. L. R., App., 77.

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Dulali Bewa v. Bhuban Shaha (1) and of *The Queen v. Mahim Chandra Chuckerbutty* (2), it has been decided that such a departure from the rules of Procedure makes the acts of a Magistrate illegal.

The appellant further contends that the Magistrate, having once made over the case to the Deputy, could not try it himself, without formally recalling the case from the lower Court under section 36. The point has been ruled in *Shanto Teorni v. Belilios* (3), and should, I think, be given in favour of the appellant in this case.

There are other questions of law raised; one that, as regards Roshan Ali, part at least of the evidence against him was not recorded in his presence; another that several witnesses whom the accused wished to call were not summoned. We do not see anything on the record that would substantiate the last objection; and had it been a true one, it would have been made, we should suppose, to the Judge when the appeal was before him. The first is however at least partly correct, as the record itself shows. As however it appears that the conviction must be quashed on the two first objections taken, it will be unnecessary to further enquire as to the second.

The appellants must be discharged.

Conviction quashed.

Before Mr. Justice Norman, Offg. Chief Justice, and Mr. Justice Ainslie.

THE MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF
 CALCUTTA (PROSECUTORS) v. AMANAT ALI AND ANOTHER
 (DEPENDANTS).*

*Criminal Procedure Code (Act XXV of 1861), ss. 308, 310, 311, 313—
 Nuisance—Slaughter-House.*

When a Magistrate, under section 308, Criminal Procedure Code, has ordered the suppression of a trade or occupation as a nuisance and injurious to the

* Reference, under section 434 of the Code of Criminal Procedure, by the Sessions Judge of the 24-Pergunnas.

(1) 3 B. L. R., A. Cr., 53.

(3) 3 B. L. R., App., 151.

(2) *Id.*, 67.

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 July 17.