

1871 We think that, although under section 180, the Deputy Magistrate was competent to dismiss the complaint, if in his judgment there was no sufficient ground for proceeding in it, this was a case in which the Deputy Magistrate ought to have made some enquiry to satisfy himself that the proceedings of the Police were not, as stated by the petitioner, partial and improper before charging the petitioner under section 211. We direct the Deputy Magistrate to proceed with reference to the above remarks.

IN THE  
MATTER OF  
THE PETITION  
OF GAUR  
MOHAN SING.

Before Mr. Justice E. Jackson and Mr. Justice Mookerjee.

1871  
August 14.

THE QUEEN v. HARGABIND DATTA SIRKAR AND OTHERS.\*

*Trial on a Sunday—Irregularity of Proceeding—Criminal Procedure Code (Act XXV of 1861), s. 171.*

A Magistrate, while travelling in his district, tried a case partly at a place called Oluhati, where he took the statements of the accused persons to certain charges. This took place on the 24th June 1871. He then fixed Sunday next at noon for the further trial of the case, to be held in another village called Nundail. On the Sunday the witnesses for the defence came to the place named, but at 3 p. m., instead of noon. The Magistrate, after waiting an hour beyond the time fixed, moved on to the next village in his district. The Magistrate then sentenced the defaulting witnesses for their absence at the appointed hour under section 174 of the Penal Code to one month's simple imprisonment.

The Sessions Judge sent up the proceedings to the High Court under section 434 of the Criminal Procedure Code, on the ground that three errors of law had been committed by the Magistrate :

1st, In fixing Sunday as the day for hearing; 2nd, in assuming the delay, only three hours, to be intentional; and 3rd, in retaining the case on his own, because section 171 of the Criminal Procedure Code renders it obligatory for a Magistrate to transfer a case under section 174 of the Penal Code to another officer for trial.

The judgment of the Court was delivered by

JACKSON, J.—We are far from satisfied with the proceedings of the Magistrate in this case. He admits that he ought not to have tried the charge but to have transferred it to another Court. His sentences are unnecessarily severe. He was very wrong to fix Sunday for the trial of the case. It is a recognized holiday, and the witnesses might, on that account, have refused to attend. That, however, was not their defence. The fact that none attended at the appointed time gives the appearance of intentional absence. But, on the other hand, they may not have known that the Magistrate would move away, and their delay of two or three hours may

\* Reference under Section 434 of the Code of Criminal Procedure.

have been accidental. This system of trying cases by Magistrates, while moving about from to day, must be very harassing to all parties. It is not necessary to pass further orders in the case as the sentences have expired.

1871

THE QUEEN  
v.  
HARGABIND  
DATTA  
SIRKAR.

*Before Mr. Justice Kemp and Mr. Justice Ainslie,*

IN THE MATTER OF THE PETITION OF BHABADA DAS.\*

*Act XXVII of 1860—Certificate of Administration—Power of Judge to recall a Certificate of Administration.*

1871  
August 24.

A certificate of administration granted under Act XXVII of 1860 may be recalled, if it has been obtained by false and fraudulent statements.

Baboo *Mahini Mohan Roy* and *Abhai Charan Bose* for the appellants.

Baboo *Kali Mohan Das* for the respondents.

THE facts of the case sufficiently appear in the judgment of the Court, which was delivered by

KEMP, J.—This is an appeal against the order of the Judge of Hooghly, cancelling a certificate granted by him to the appellants, Durga Das Ghose and Prem Chand Ghose, under Act XXVII of 1860. It appears that these parties applied for a certificate to administer the estate of their brother Nabin Chandra, deceased. In that application they stated that Nabin Chandra had died without a wife and without issue—“*Srihim*,” is the word used. They succeeded in obtaining a certificate. Subsequently the widow of Nabin Chandra petitioned the Court, stating that a gross fraud had been committed by her brother-in-law; that she was the widow of Nabin Chandra, and as such, under the Hindu Law, entitled to a certificate in preference to Durga Das and Prem Chand Ghose. Upon this the Judge instituted an enquiry, and, after taking evidence on both sides, he has come to the deliberate conclusion that the certificate was obtained by the applicants fraudulently, and that their story now set up that the widow of Nabin Chandra was unchaste, and therefore not entitled to inherit or to obtain a certificate, was false. This being a regular appeal, the whole of the evidence has been read to us and commented upon. We concur with the Judge in holding that this evidence is not reliable. It is very clear even from this evidence that the offence, if any offence was committed was condoned by the husband; that he continued to live with his wife, and that after his death, his wife was acknowledged by her father and lived with her father. There is also evidence that she performed the *shradh* of her husband, and there is the evidence of the Doctor, an

\*Miscellaneous Regular Appeal, No. 146 of 1871, from an order of the Judge of Hooghly dated the 21st February 1871.