

Before Mr. Justice Kemp and Mr. Justice Ainslie.

IN THE MATTER OF THE PETITION OF GAUR MOHAN SING.\*

*Criminal Procedure Code (Act VII of 1869), s. 249—Penal Code (Act XLV of 1860), s. 211.*

1871  
Sept., 9.

Procedure before framing a charge under section 211 of the Penal Code.

The Sessions Judge of Hooghly submitted the following case for the opinion of the High Court :

“The petitioner first applied to the Police, accusing certain persons of having committed theft. The Police enquired into the case, and reported that the case was a false one. The petitioner, pending the enquiry, applied to the Deputy Magistrate, calling the acts of the Police in question, and asking for the Deputy Magistrate’s personal investigation into his complaint. The Deputy Magistrate took up the petition, with the Police Report, and summoned the petitioner on a false complaint under section 211, without taking any evidence on petitioner’s behalf.”

The Sessions Judge cited the cases of *The Queen v. Sheikh Edoo* (1) and *Dinonath Gope v. Saroda Mookopadhia* (2), and continued: “The Deputy Magistrate was bound to take the evidence of the witnesses of the complainant respecting the matter which he charged against the accused, inasmuch as it was a charge cognizable under Chapter XIV of the Code of Criminal Procedure; and until he had done so, and found the charge to be unsustainable, he was not justified in dismissing the petitioner’s case and instituting proceedings against him under section 211 merely upon the Police Report.”

The opinion of the High Court was expressed by

KEMP, J.—The rulings quoted by the Judge were passed before Act VIII of 1869 came into operation. Under section 249 of Act VIII, the provisions of section 180 have been made applicable to trials of offences under Chapter XIV of the Criminal Procedure Code.

In this case the petitioner charged a number of people with dacoity. During the police enquiry the petitioner became dissatisfied with the proceedings of the Police, and charged them with partiality. He applied to the Deputy Magistrate to proceed to the spot in person and to examine the witnesses adduced by the prosecutor. The Deputy Magistrate took no action in the matter, but waited the report of the Police. The Police reported the charge as false, and the Deputy Magistrate, without taking any evidence or making any further enquiry, has directed the petitioner to be tried for an offence under section 211.

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

(1) 2 W. R. Cr., 47.

(2) 7 W. R. Cr., 47.

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.