

[APPELLATE CRIMINAL.]

Before Mr. Justice Kemp (Offg. C. J.), and Mr. Justice Ainslie.

IN THE MATTER OF ISWAR CHANDRA KOER *v.* UMESH CHANDRA PAL (PRISONER).*

1871
Sept. 30

Criminal Procedure Code (Act XXV of 1861), ss. 66 & 67—Act VIII of 1869, s. 66 B.

A Magistrate of a district, before whom a complaint had been made, without complying with the provisions of section 66 of Act XXV of 1861, sent the petition to be disposed of by a Deputy Magistrate not authorized to receive complaints without reference from the District Magistrate, who tried and convicted the offender.

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

Held, per AINSLIE, J., that the order sending the petition to the Deputy Magistrate for disposal gave the latter officer power to receive the complaint under section 66 B of Act VIII of 1869, and that the subsequent proceedings therefore were valid.

ONE Iswar Chandra Koer presented a petition to the District Magistrate of Hooghly, charging one Umesh Chandra Pal and his two sons with having committed an assault on him and beaten him. The Magistrate passed an order on the back of it, making over the case to the Deputy Magistrate, Baboo Runglal Banerjee, for disposal. The Deputy Magistrate took a short statement on oath of the petitioner as to the grounds of his complaint, and directed the issue of a summons against Umesh Chandra Pal alone. Baboo Runglal Banerjee took the depositions of some of the witnesses for the prosecution, and left the station. The case was then taken up by Baboo Ramesh Chandra Mookerjee, another Deputy Magistrate, who, after taking the depositions of the witnesses for the prosecution anew, drew up a charge, and then recorded the evidence on behalf of the accused. He found the accused guilty of having committed an assault.

*Reference to the High Court under section 434 of the Code of Criminal Procedure by the Sessions Judge of Hooghly.

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The accused then applied to the Court of Sessions to send the proceedings of the case to the High Court under section 434 of the Criminal Procedure Code, in order that the conviction might be quashed, on the ground that the Magistrate had not jurisdiction to try the case. The Judge referred the proceedings to the High Court.

Mr. *Woodroffe* (with him Mr. *Sandel*) contended, that the Deputy Magistrate had no jurisdiction to try the accused. The prosecution in this case preferred a complaint by petition which would make section 66 of the Criminal Procedure Code applicable. By that section the Magistrate of the district, or a Magistrate who is authorized without reference from the Magistrate of the district to hear complaints, is required to examine the complainant, and the examination is to be reduced into writing and signed by the complainant and the Magistrate. After this has been done, the Magistrate, under section 67, is to consider whether there are sufficient grounds for taking action, and to issue summons or warrant as may appear best to him. He may, however, after the issuing of summons or warrant against the accused, direct that the trial be held before any other officer having jurisdiction to try that particular offence, as provided for by the latter part of section 67. But up to the issuing of summons or warrant, only two classes of officers are authorized by law to deal with a complaint,—*viz.*, the Magistrate of the district, or a Magistrate who is authorized without reference from the Magistrate of the district to receive complaints, and no other officer admit a complaint. In this case the Magistrate of the district did not himself carry out the procedure laid down in section 66 and the first part of section 67, but, on the presentation of the petition of complaint, sent that petition to be dealt with according to law to the Deputy Magistrate, who was not an officer authorized to receive complaints without reference from the Magistrate of the district. The Deputy Magistrate did all the preliminaries up to the issuing of summons,—*i. e.*, he initiated the complaint which he had no authority to do. In this case there was a trial and conviction of an offence upon a complaint which was not lawfully admitted. There

being then no initiation of the complaint, all the subsequent proceedings were void—*The Queen v. Girish Chandra Ghose* (1), *Dulali Bewa v. Bhuban Shaha* (2), and *The Queen v. Mahim Chandra Chuckerbutty* (3). [Ainslie, J.—The order on the back of the petition of complaint by the Magistrate of the district sending it for disposal to the Deputy Magistrate, would give the latter officer authority to receive that particular complaint under section 66 B, Act VIII of 1869. By that section the Magistrate of the district could empower generally any Magistrate or Subordinate Magistrate in his district to entertain cases, either on complaint preferred directly to themselves, or on the report of a police officer, pending the sanction of the Local Government, and therefore in a particular case.] Section 66 B clearly could not apply to the order on the back of the petition in this case. The section gave the Magistrate of the district the power to authorize temporarily any other Magistrate or Subordinate Magistrate, not to entertain cases on complaints preferred to the District Magistrate (which is what was done here), but on complaints preferred directly to themselves,—*i. e.*, to such other Magistrate or Subordinate Magistrate. The District Magistrate under this section could only give this authority generally, and not in any particular case. In this case there was no complaint preferred directly to the Deputy Magistrate.

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KEMP, J.—I have on three occasions, in *Queen v. Mohim Chandra Chuckerbutty* (3), *Dulali Bewa v. Bhuban Shaha* (2) and the *Queen v. Girish Chandra Ghose* (1), sitting with Justices Glover and Markby, ruled that a Magistrate is not competent to make over a case to a Subordinate Deputy Magistrate who has not been empowered to entertain cases either on complaint or on the report of the Police, without first recording the prosecutor's statement. I would quash the conviction as illegal. The accused must be released.

(1) 7 B. L. R., 513

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

(2) 3 B. L. R., A. Cr., 53.

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ARNSLIE, J.—It seems to me that, under section 66B of the Criminal Procedure Code, a Magistrate who is competent to direct that all complaints or reports of Police officers may be dealt with by a Subordinate Magistrate, is also competent to direct any particular complaint or report to be so dealt with. I would therefore not interfere.

Conviction quashed.

[APPELLATE CIVIL.]

Before Mr. Justice Bayley and Mr. Justice Paul.

1871
 May 8.

MANMAHINI DASÍ (PLAINTIFF) v. BALAK CHANDRA
 PANDIT (DEFENDANT).*

Hindu Law—Maintenance of Grandson—Suit against Grandfather—Conduct of a Mother.

A widowed Hindu mother, who refuses to dwell with her minor son in her father-in-law's house, and sells her infant daughter in marriage to a low caste person thereby injuring the social position of her father-in-law's family, is not entitled to recover maintenance on account of her son from her father-in-law.

THE plaintiff brought this suit against her father-in-law for the maintenance of herself and her son, defendant's grandson, and for the recovery of certain ornaments which she alleged she had left in the charge of the defendant.

The defendant was willing to maintain the plaintiff and her son if they resided in his house, but declined to do so if she continued to live in her father's house. He denied the claim for the ornaments.

The Moonsiff held that the plaintiff was entitled to maintenance if she consented to live in her father-in-law's house, and not otherwise, but that the case of her minor son was different who, during minority, was entitled to maintenance from his grandfather irrespective of the place of the residence of his mother.

*Special Appeal, No. 2442 of 1870, from a decree of the 2nd Subordinate Judge of the 24-Pergunnas, dated the 23rd August 1870, reversing a decree of the Moonsiff of that district, dated the 29th December 1869.