

in order that the fine of Rs. 10, imposed on the petitioners, may be remitted, and the conviction quashed. The only alleged irregularity in the proceedings has been the omission by the Magistrate of the district to examine the complainants; under s. 66 of the Criminal Procedure Code before transferring the complaint for trial to a Subordinate Magistrate.

This irregularity was held fatal to the validity of the whole proceedings in certain cases cited by the Judge, the principal of which is that of *The Queen v. Girish Chandra Ghose* (1), in which Glover, J., delivered judgment as follows:—"In the first place he (the district Magistrate) did not record the complainant's statement before referring the case to the Deputy Magistrate, as he was bound to do under s. 66 of the Code (Act XXV of 1861). There is an order on the back of the petition making over the case, but no examination of the complainant 'reduced in to writing,' and signed by the complainant and the Magistrate." In the cases of *Dulali Bewa v. Bhuban Shaha* (2) and of *The Queen v. Mahim Chundra Chuckerbutty* (3), it has been decided that such a departure from the rules of procedure makes the acts of a Magistrate illegal. This case was followed by that of *In the matter of Iswar Chandra Koer v. Umesh Chandra Pal* (4), 30th September 1871, one of the Judges (Anslie, J.) dissenting. On the other hand, it was held, in the case of *The Queen v. Umesh Chandra Chowdhry* (5), that a transfer of a complaint

1872

 QUEEN
 v.
 HARU.

- (1) 7 B. L. R., 513.
 (2) 3 B. L. R. (A. Cr.), 53.
 (3) 3 B. L. R. (A. Cr.), 67, overruled by *The Queen v. Narayan Naik*, 5 B. L. R., 660.
 (4) 8 B. L. R., 19.
 (5) Before Mr. Justice F. B. Kemp and Mr. Justice E. Jackson.

THE QUEEN v. UMESH CHANDRA
 CHOWDHRY.*

The 14th June 1870.

In this case the Sessions Judge of Beerbhoom made a reference to the

High Court, under s. 434 of Act XXV of 1861, to have the sentence of the Deputy Magistrate quashed, on the ground that the Magistrate of the district, without examining the complainant, and reducing the examination into writing, and signing his name as Magistrate to such examination, referred the petition to the Deputy Magistrate for trial, contrary to s. 66 of Act XXV of 1861. In making the reference, the Sessions Judge cited as an authority the case of *The Queen v. Mahim Chandra Chuckerbutty* (a).

* Reference to the High Court, under s. 434 of the Code of Criminal Procedure, by the Sessions Judge of Beerbhoom.

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

1872

QUEEN
v.
HARU.

by the Magistrate of a district to a Deputy Magistrate exercising full powers, without previously recording any examination of the complainant, was warranted under s. 66 of the Criminal Procedure Code. The first case, cited by Glover, J., does not bear materially upon the question before us. In the case of *The Queen v. Mahim Chandra Chuckerbutty* (1) Kemp, J., decided that, as a matter of fact, the Magistrate had no complaint before him, and Markby, J., concurred in this finding. It may possibly be gathered from the judgments that the learned Judges were inclined to hold that omission by the District Magistrate to record a complainant's examination, as required by s. 66, would invalidate all subsequent proceedings by a Subordinate Magistrate, to whom the complaint might be transferred; but this was not the point on which the judgments turned, so that it seems that there is really no authority, except that of the case of *The Queen v. Girish Chandra Ghose* (2), for holding the examination of the complainant before transfer of the complaint absolutely essential.

S. 273 of the Criminal Procedure Code (Act XXV of 1861), under which District Magistrates are empowered to refer complaints to Magistrates Subordinate to them, in no way defines the stage at which the transfer may be made; and s. 275 makes all rules prescribed for the guidance of the Magistrate of the district applicable to proceedings by the Subordinate Magistrate. This Court in Circular No. 6, dated 16th May 1864, paragraph 2, held that "a Magistrate may at

The Judgment of the Court on this reference was delivered by

KEMP, J.—In the case of *The Queen v. Mahim Chandra Chuckerbutty* (1) referred to by the Judge, there was a statement, but it was not such a statement as to amount to the complaint contemplated by s. 66 of the Code of Criminal Procedure.

In the case referred to us, the Magistrate sent the petition presented by the complainant to the Deputy Magistrate, who exercises the full powers of a Magistrate. We think that, under s. 66

of the Procedure Code, and the Circular Order No. 6, dated the 16th May 1864, the Magistrate of the district was justified in making over the petition to the Deputy Magistrate for enquiry and trial (a).

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

(2) 7 B. L. R., 513.

(a) But see *per* Kemp, J., in *Iswar Chandra v. Umes Chandra Pal*, 8 B. L. R., 19, and *per* Glover, J. (Kemp, J., concurring) in *The Queen v. Girish Chandra Ghose*, 7 B. L. R., 503

once make over the complaint to be enquired into and tried by any Magistrate subordinate to him." Such subordinate Magistrate should, in this latter case, proceed in the manner laid down by ss. 66 and 67, Code of Criminal Procedure (Act XXV of 1861).

1872

 QUEEN
 v.
 HARU.

No one appeared for the petitioners or the Crown in this case

The judgment of the Full Bench was delivered by.

COUCH, C.J.—We are of opinion that the question referred to the Full Bench should be answered in the negative. We agree in the decision in the case of *The Queen v. Umesh Chandra Chowdhry* (1). This case was not cited in the case of *The Queen v. Girish Chandra Ghose* (2) where no one appeared to support the conviction. In the other cases the point was not decided. The examination of the complainant by the Magistrate to whom the case is referred is sufficient for the regularity of the proceedings.

(1) *Ante*, 147.

(2) 7 B. L. R., 513.