

## [APPELLATE CRIMINAL.]

1872  
June 25

*Before Sir Richard Couch, Kt', Chief Justice, Mr. Justice Kemp, Mr. Justice L. S. Jackson, Mr. Justice Markby, and Mr. Justice Ainslie.*

THE QUEEN *v.* HARU AND ANOTHER.\*

*Criminal Procedure Code (Act XXV of 1861), ss. 66 & 273—Reference by District Magistrate to Subordinate Magistrate of Complaint without Previous Examination of Complainant.*

A District Magistrate is not bound, on receipt of a complaint, to examine the complainant under s. 66 of Act XXV of 1861, before referring the complaint to a Subordinate Magistrate for disposal. The examination of the complainant by the Magistrate to whom the case has been referred is sufficient (1).

In this case the accused had been convicted of the offence of using criminal force. The Officiating Sessions Judge of Hooghly in a letter dated the 6th January 1872, made a reference to the High Court, under s. 434 of the Criminal Procedure Code observing "the illegality, on account of which I have been called upon to make this reference, consists in the omission of any preliminary examination under s. 66 of the Code of Criminal Procedure. In all other respects and in all proceedings held in the presence of the accused, the procedure enjoined in the Code has been observed."

The case came on for hearing before Couch, C. J., and Ainslie, J.

The Court referred the following point for the decision of a Full Bench :—"Whether, on receipt of a complaint, the Magistrate of a district is bound, under s. 66 of the Criminal Procedure Code, to examine the complainant before referring the complaint to a Subordinate Magistrate."

In making the reference the Court observed :—

Couch, C. J.—The Officiating Sessions Judge of Hooghly has sent up the proceedings of the Magistrate in this case,

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

(1), See *The Queen v. Narayan Naik*, 5 B. L. R., 660.

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

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- (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).