

## CRIMINAL REVISION.

Before Mr. Justice Ghose and Mr. Justice Hill.

1895  
November 20.

SUDHAMA UPADHYA AND OTHERS (PETITIONERS) v. QUEEN-EMPRESS  
(OPPOSITE PARTY.) \*

*Magistrate—Criminal Procedure Code (Act X of 1882), section 537 and section 555—Disqualifying interest of Magistrate—Investigations preliminary to a trial—“Personally interested”—“Court of competent jurisdiction.”*

Where investigations of the police preliminary to a trial are directed to a very considerable degree by a Magistrate, such Magistrate is personally interested in the case and is disqualified from trying it by the provisions of section 555 of the Criminal Procedure Code. A disqualifying interest may result from a purely official connection with the initiation of criminal proceedings. *Girish Chunder Ghose v. Queen-Empress* (1) followed.

A Magistrate who, in consequence of such a personal disqualification, is forbidden by law to try a particular case, though he may be authorized generally to try cases of the same class, cannot be said, with respect to that case, to be a Court of competent jurisdiction, and his orders are not covered by the saving provisions of section 537.

RULE to show cause why the order passed by the District Magistrate of Burdwan in appeal on the 19th November 1895 upholding the conviction and confirming the sentence passed by the Sub-Divisional Officer of Ranigunge should not be set aside. The rule was obtained on the ground that the conviction by the Sub-Divisional Officer was illegal and his proceedings void, inasmuch as he was disqualified under the provisions of section 555 of the Criminal Procedure Code from trying the case by reason of his being personally interested in the case and not having obtained the permission for which the section provides.

The facts of the case and the part taken by the Magistrate in connection with the preliminary investigations are sufficiently disclosed in the judgment of the High Court.

\* Criminal Motion No. 600 of 1895, against the order passed by J. Windsor Esq., District Magistrate of Burdwan, dated the 19th November 1895.

(1) I. L. R., 20 Calc., 857.

Mr. *H. N. Morrison* and Babu *Bepin Behary Ghose* appeared on behalf of the petitioners.

Mr. *P. Mitter* for the Crown.

Mr. *Morrison*.—The Assistant Magistrate having practically conducted the police investigations and having himself ordered the arrest of some of the accused persons was disqualified from trying the case. *Sergeant v. Dale* (1), *In re Het Lall Roy* (2), *Queen-Empress v. Bholu Nath Sen* (3), *Queen-Empress v. Donnelly* (4), and *Girish Chunder Ghose v. Queen-Empress* (5). [HILL, J.—If a Magistrate is disqualified from trying a particular case, is he necessarily without “competent jurisdiction” to try it within the meaning of section 537 of the Criminal Procedure Code?] The disqualification must in some cases, as it does in the present case, amount to want of competent jurisdiction, *e.g.*, a Magistrate who disregards the request of an accused person under the last clause of section 191 of the Code and proceeds with the trial is without competent jurisdiction. *Queen-Empress v. Hawthorne* (6). There is no definition of “disqualification.” A Magistrate who is disqualified from trying a case on the ground of such an interest as the Magistrate in this case possessed can be said to have competent jurisdiction only in one sense, that is to say, either territorially or as regards the maximum amount of punishment. It is his interest that renders him disqualified, and that interest divests him of a jurisdiction he might otherwise rightly have had. The saving provisions of section 537 of the Code extend only to orders of a Court of competent jurisdiction.

Mr. *P. Mitter*.—The petitioners have failed to show that they were in any way prejudiced by the trial, or that there was any failure of justice. They having failed to avail themselves of the opportunity to apply for a transfer, cannot complain of the Magistrate having proceeded with the trial. The Magistrate filed a statement of what action he took in the investigations in order to assist the petitioners. He could have no possible interest in securing this conviction.

(1) L. R., 2 Q. B. D., 558.

(3) I. L. R., 2 Calc., 23.

(5) I. L. R., 20 Calc., 857.

(2) 22 W. R., Cr., 75.

(4) I. L. R., 2 Calc., 405.

(6) I. L. R., 13 All., 345.

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The judgment of the High Court (GHOSE and HILL, JJ.) was as follows :—

The circumstances under which we granted this rule were these : On the 4th June last the Mahomedan festival of *Bakr Id*, a somewhat serious riot took place at Kindwa, a village near Barrakar and adjoining the works of the Bengal Iron Steel Works Company, in the course of which the mosques of the village were invaded by a large body of armed Hindus, the worshippers ejected, and many of them injured. From the sketch of the occurrence of the day, given in his judgment by the Magistrate who afterwards tried the persons accused of complicity in the riot, we derive the following particulars : In the early morning of the 4th June information was given to the managers of the abovementioned company that there there was a likelihood of a disturbance taking place between the Hindus and Mahomedans of the village, in which it appears a large number of the company's employés live. The managers did what they could by communicating with the leaders of the two communities to avert a collision, and Mr. Glover, one of their number, with the same object in view, proceeded from the factory to the village. He found the market place occupied by a large and excited crowd. He ascertained from the proprietor of one of the mosques that it was not intended to depart from the usual practice as to the place of sacrificing cows, and then having given orders that all the company's servants should go within the works he returned to the factory. At 10 o'clock the services in the mosques of which there are two in the village began. Shortly afterwards, just as the *nemaz* had concluded in one of these and the sermon was about to begin, a considerable body of Hindus armed with *lathis* and stones approached and began to throw stones into the building. Some of the worshippers were struck. The Hindus then entered the precincts of the mosques, and some of those within were beaten while others were struck with stones and *lathis* as they made their escape. Having emptied this mosque of its congregation, the Hindus proceeded to the other. The service had not yet concluded and there a similar scene was enacted. The door of the mosque was broken open and the worshippers were expelled, some of them being beaten within the building and some struck with stones and *lathis* as they

escaped. Having driven the Mahomedans from their places of worship the Hindus gradually dispersed, and by noon quiet was restored in the village. Meanwhile information of the riot had been carried to the police at Barrakar, and several telegrams had been sent to the Sub-Divisional Officer at Ranigunge, and at about 2 o'clock in the afternoon of the same day that officer, accompanied by an Inspector of Police, arrived on the scene. As they did so they perceived a number of men armed with *lathis* congregated on some high ground opposite one of the mosques. They dispersed, however, and ran as soon as they saw the police, but the police gave chase, and in the course of the pursuit made eleven arrests. During that afternoon and on the following day thirteen other persons were arrested on the charge of having been concerned in the riot of the morning of the 4th June.

Eventually the twenty-four persons thus arrested were placed upon their trial before the Assistant Magistrate of Ranigunge upon charges under sections 143, 147, 296 and 323 of the Indian Penal Code. One of them died before trial, and one was acquitted by the Assistant Magistrate. Of the remaining twenty-two the majority was convicted of having taken part in the riot of the morning of the 4th June. Four were convicted likewise under section 296, three under section 323, and eleven were convicted under section 143 as having been members of the unlawful assembly of the afternoon, in the dispersion of which the police took part. There was then an appeal from the judgment of the Assistant Magistrate to the District Magistrate of Burdwan, which resulted in the reversal of all the convictions under section 143. Two of the accused, who had been convicted by the Assistant Magistrate under that section only, were accordingly acquitted. In the case of six others of the accused who had been convicted under section 147 as well as section 143, the District Magistrate held that the convictions under the former section were also unsustainable and acquitted them on both charges. In the case of the remaining fourteen he upheld the conviction. It was on the petition of these fourteen persons that we issued this rule, and the position taken by them is that their conviction by the Assistant Magistrate was illegal and his proceedings void, inasmuch as he was disqualified under the provisions of section 555 of the Code from trying

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them by reason of his being personally interested in the case and not having obtained the permission for which the section provides. The plea is founded upon the action taken by the Assistant Magistrate in connection with the proceedings of the police which followed upon the riot, and it becomes necessary therefore to inquire what part the Assistant Magistrate actually took in those proceedings. He has himself assisted us materially in the consideration of this question by a statement which he placed upon record in which he describes in some detail the steps taken towards the apprehension of the rioters and the course of the police investigations while he was present on the scene on the 4th and 5th June. We think it right to say that this statement was not made by the Assistant Magistrate as a witness in the case; that is to say, it was not made upon oath, and the Assistant Magistrate was not cross-examined upon it; but he explains that he conceived it to be his duty in the interest of the accused that the extent to which he had been concerned in the case in its earlier stages should be known, and he accordingly wrote out the statement and placed it upon record.

From it we learn that the Assistant Magistrate was himself the Sub-Divisional Officer (of whom mention has been made above) who, accompanied by the Inspector of Police, arrived at Kindwa in the afternoon of the 4th June. On his arrival he was met by the proprietor of one of the village mosques, who took him to his mosque, and from there pointed out to him a body of armed Hindus. Under his orders the police went in pursuit of these men and he witnessed their flight. While the pursuit continued he remained among the Mahomedans inquiring from them what had happened, and a number of Mahomedans who had been injured were shown to him. He then followed the police and came up with them in the neighbourhood of the factory, where he found eleven men in the custody of the police with a bundle of *lathis* lying beside them. These were the eleven persons who were afterwards convicted by the Assistant Magistrate under section 143 of the Penal Code. He next went to the factory where the officials were questioned by the Inspector of Police, and he himself conversed with some of the European staff about the riot. Soon afterwards some five

men were arrested by the police in his presence apparently in consequence of information received from the factory staff. The Assistant Magistrate mentions the names of two of those persons, Daswant (since deceased) and Sudhama, and it appears from the evidence of the Inspector of Police that these two persons were named to him by Mr. Harris, one of the managers of the factory, while Mr. Barrett, another of the factory staff, gave him the names of three others, Ram Sukul Pauro, Dudnath, and Gopi Mistri. Three out of these five persons are among the present petitioners. From the factory the Assistant Magistrate went to the manager's house and from there to the village. In the village he found the Inspector of Police pursuing his inquiries. He saw several wounded men there, and particularly examined one of them whose arm, it was said (but untruly), was broken. He further took the statement of one of the accused, of which of them does not, however, appear. Then on the information of a Mahomedan he went with some chowkidars to a house near the market place and searched it. He found four men in hiding, the names of two of whom, Durga and Debi, he mentions. He brought them out of the house and directed the Inspector of Police to arrest them. He passed the night of the 4th June at the house of the manager of the factory, and next morning went again to the village where he found the Inspector of Police continuing his inquiries. He sat some time with the Inspector, but states that he then took no part in the investigation. Again, in the afternoon, however, he was with the Inspector while the inquiry was proceeding, and on this occasion "took the statement of another Babu." He then took the Inspector with him to the factory where some of the Europeans made statements to the Inspector in his presence, notes of which were made, and then two more arrests were made in his presence. He then left the factory and returned to Ranigunge, and so his connection with the investigation concluded.

In the circumstances disclosed by this statement it seems to us that there can be but one answer to the question now before us. It appears to us impossible that the Assistant Magistrate could have brought to the trial of the case a mind devoid of preconceived impressions founded upon his own personal knowledge regarding the guilt of the accused. Eleven of the alleged rioters,

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of whom nine are now before this Court, were arrested in his presence ; some of them in consequence of information given either directly to him or in his hearing by the factory staffs. Four of their number were traced by him on information received from one of the opposite party to the place where they had concealed themselves and then arrested under his orders. He intervened at various stages of the subsequent police inquiries, and himself recorded the statements of two persons, one of whom was an accused person, and without going into further detail it appears to us clear from the whole tenor of his statement that, while the investigations of the police were nominally in the hands of the Inspector of Police, they were from the outset directed to a very considerable degree by the Assistant Magistrate. Under these circumstances we certainly think that the Assistant Magistrate ought not to have tried the case. Indeed, we do not hesitate to say that he was disqualified from trying it by the provisions of section 555 of the Code of Criminal Procedure. That a disqualifying interest may result from a purely official connection with the initiation of criminal proceedings seems to us to be clear, and the same view was taken in the case of *Girish Chunder Ghose v. The Queen-Empress* (1), in which the Magistrate, as in the present case, took an active part in forwarding the police inquiries and collecting evidence against the accused. The learned Judges, who dealt with the case in this Court, quashed the convictions on that ground, observing in the course of their judgment :— “ He (the Magistrate) may also, we think, be said to have been personally interested in them ” (the proceedings), “ for the word ‘ personally ’ in section 555 does not, we think, mean merely ‘ privately interested ’ or ‘ interested as a private individual, ’ but includes such an interest as the District Magistrate must in this case have had in the conviction of the accused [see the case of *In re Het Lal Roy* (2)]. ” In this view of the meaning of section 555 we entirely agree, and we think that there is quite enough in the materials now before us to justify the conclusion that the Assistant Magistrate was in the same sense interested in the result of the present proceedings.

(1) I. L. R., 20 Calc., 857.

(2) 22 W. R., Cr., 75.

It was, however, contended that, granting the disqualification of the Assistant Magistrate, we were precluded under the provisions of section 537 of the Code from setting aside his order, unless it were shown that a failure of justice had resulted from his being personally interested in the case. We do not think that this contention is sustainable. The saving provisions of section 537 extend only to the orders and so forth of Courts of competent jurisdiction; and in our opinion a Magistrate who in consequence of a personal disqualification is forbidden by law to try a particular case, though he may be authorized generally to try cases of the same class, cannot be said with respect to that case to be a Court of competent jurisdiction. Section 537 has therefore in our opinion no application to the present case, and it must be dealt with on the footing of its having been tried by a Court which for want of jurisdiction was incompetent to deal with it.

We accordingly set aside the convictions and sentences, but we think that in the case of those of the petitioners who have not already served their full term of imprisonment, there must be a new trial by such Magistrate, other than the Magistrate who has already tried them, as the Magistrate of the District may appoint. In the event of the trial resulting in the conviction of any of the accused the Magistrate will, in awarding sentences, take into account the imprisonment they have already undergone. Those of the petitioners who have already served their full terms of imprisonment will not be retried.

S. C. B.

*Convictions set aside.*

## APPELLATE CIVIL.

*Before Mr. Justice Norris and Mr. Justice Banerjee.*

KANTO PRASHAD HAZARI (ONE OF THE DEFENDANTS) v. JAGAT CHANDRA DUTTA AND OTHERS (PLAINTIFFS.) \*

*Evidence Act (I of 1872), sections 36, 33—Map made by Deputy Collector for particular purpose—Proof of accuracy of map.*

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August 12.

\* Appeal from Appellate Decree No. 215 of 1894, against the decree of Babu Mohim Chandra Ghose, Officiating Subordinate Judge of Chittagong, dated the 25th of November 1893, affirming the decree of Babu Mohim Chandra Guha, Officiating Munsif of Satkauea, dated the 8th of July 1893.