

*Before Mr. Justice Ainslie and Mr. Justice Broughton.*

THE EMPRESS *v.* ABDOOL KARIM;

AND

THE EMPRESS *v.* GOLAM MAHOMED.\*

1878  
June 6.

*Summary Procedure—Unlawful Assembly armed with a deadly Weapon—  
Indian Penal Code, ss. 143, 144.*

No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration and not to be believed. Therefore, a Magistrate, when he has before him a person charged with having been armed with a deadly weapon while a member of an unlawful assembly, is not at liberty to disregard that part of the charge which charges the prisoner with having been armed with a deadly weapon, and so to give himself jurisdiction to try the case summarily, and then by inflicting a sentence of imprisonment not exceeding three months to deprive the prisoner of his right of appeal.

THE prisoners in this case had been charged before a Deputy Magistrate with the offence of having been members of an illegal assembly, and there was evidence, which, if true, showed that they had at the time been armed with swords; and were, therefore, punishable under s. 144 of the Indian Penal Code. The Deputy Magistrate chose to disregard that portion of the evidence which made the offence with which the prisoners were charged an offence punishable under s. 144 of the Indian Penal Code; and treating the charge as one under s. 143, tried and convicted them summarily, and sentenced them to terms of imprisonment not exceeding three months each.

On the proceedings of the Deputy Magistrate being brought to the notice of the Officiating Sessions Judge of Patna, he submitted the record for the orders of the High Court, addressing at the same time a letter to the Registrar of the High Court, of which the following is an extract:—

“It seems to me quite clear that the Deputy Magistrate had no right to take the case up summarily, as it was alleged that the

\* Criminal Reference, No. 482 of 1878, from an order of J. F. Browne, Esq., Officiating Sessions Judge of Zilla Patna, dated the 29th May 1878.

members of the alleged illegal assembly were armed. This being so, the offence was one under s. 144, and not under s. 143. In the same way, Gholam Mahomed, who is charged with hiring persons to join an unlawful assembly, was punishable, if the members of the assembly were armed, under the provisions of s. 144, and therefore could not be tried summarily.

Mr. *M. L. Sandel* for the petitioners contended, that the petitioners had been injured by the course adopted by the Deputy Magistrate, who ought to have framed a charge against them under s. 144 of the Penal Code. By charging them under s. 143, and sentencing them to short periods of imprisonment, he had deprived them of their right of appeal.

ANISLIE, J. (BROUGHTON, J., concurring).— Section 274 of the Code of Criminal Procedure takes away the right of appealing from persons convicted by Magistrates of the first class exercising summary jurisdiction when the sentence is one of imprisonment not exceeding a term of three months. Therefore, in the present case, the convicted persons, who have been sentenced to a term of imprisonment not exceeding three months, are deprived of the right of appeal on the facts, if the Deputy Magistrate was right in trying the case summarily.

The Deputy Magistrate seems to think that the fact that he had not the Police papers at the time that the prisoners were put on their trial entitled him to deal with the case on the verbal statement of a Court Sub-inspector. But on looking at the record it appears that the very first witness for the prosecution states distinctly that there were two persons who appear to have been the leaders of the unlawful assembly (if the evidence of this witness is to be believed) armed with swords. It is quite clear that the Deputy Magistrate should have looked to the sworn evidence before him, and not to any verbal statement of a Court Sub-inspector, for the purpose of determining how the trial was to be conducted; and when he found that the charge actually made before him was a charge which would not fall under any section of the Penal Code admitting summary trials, the proceedings should have been framed as in ordinary trials. If this conviction had been recorded under s. 144, the accused would have had a right of appeal.

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EMPRESS  
v.  
ABDOOL  
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—  
EMPRESS  
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This Court has frequently laid down that no Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration and not to be believed.

As the Deputy Magistrate was bound to treat this case as a charge under s. 144, it follows from the construction that has been put on the 34th section of the Criminal Procedure Code, that we are bound to hold his proceedings void.

All these proceedings must, therefore, be quashed, and the Deputy Magistrate must try the prisoners *de novo*.

The same order will be made in the case of Golam Mahomed.

*Proceedings quashed.*

*Before Mr. Justice Ainslie and Mr. Justice Broughton.*

IN THE MATTER OF THE PETITION OF HURRO SOONDERY  
CHOWDHRAIN (PETITIONER).\*

1878

June 24.

*Pardanashin Female—Right to be examined on Commission—Procedure on Examination—Mode in which a Magistrate should show cause against a Rule.*

A pardanashin woman summoned as a witness in a criminal case has a right to be exempted from personal attendance at Court, and to be examined on commission.

When a Magistrate wishes to show cause against a rule issued by the High Court, the proper course for him to adopt is to apply to the Legal Remembrancer to cause an appearance to be made for him in Court, and not to address the Registrar by letter.

IN this case the petitioner, Hurro Soondery Chowdhrain, was summoned by the Magistrate of Mymensing to attend at his Court on the 7th of June and give evidence for the prosecution at a trial in which her son and five others were the persons accused. The petitioner, on the 30th of May, applied to the Magistrate to be excused from personal attendance, on the ground of being a pardhanashin. She further stated that she

\* Criminal Reference, No. 105 of 1878, from an order of R. H. Pawsey, Esq., Magistrate of Mymensing, dated the 17th June 1878.