

Before Mr. Justice Markby and Mr. Justice Prinsep.

1878
July 3.

THE EMPRESS v. HARY DOYAL KARMOKAR.*

Criminal Procedure Code (Act X of 1872), ss. 195, 295, 296—Discharge of Accused—Jurisdiction—First Evidence—Revival of Proceedings.

A Deputy Magistrate having dismissed a case instituted under s. 380 of the Penal Code without taking certain evidence which in his opinion would have been of little value, the Magistrate of the District, on the application of the complainant, took such evidence, and committed the accused for trial before the Sessions Court.

Held, on reference to the High Court, that as the words "sessions case" in s. 296 of the Criminal Procedure Code have reference only to a case triable exclusively by a Court of Session, the Magistrate's action could not be supported under that section, but that (as further evidence in addition to that taken by the Deputy Magistrate was forthcoming) it was sustainable on the principle laid down in *Empress v. Donnelly* (1).

IN this case the accused was charged with theft in a dwelling-house under s. 380 of the Penal Code, an offence triable by any Magistrate. The Deputy Magistrate who tried the case discharged the accused under s. 195 of the Code of Criminal Procedure, omitting, however, to take the evidence of the prosecutor's mother, a material witness, presumably because she was reputed to be of weak intellect. On the application of the complainant, the Magistrate of the District sent for and examined this witness, and ultimately committed the accused for trial before the Sessions Court, overruling the plea of want of jurisdiction raised by the accused, on the ground that the offence with which the accused was charged being triable by the Court of Session as well as by a Magistrate, the Court, under s. 296 of the Criminal Procedure Code, had jurisdiction to commit the case for trial. The Sessions Judge

* Criminal Reference, No. 938 of 1878, by C. B. Garrett, Esq., Sessions Judge of Dacca, dated the 28th June 1878.

(1) I. L. R., 2 Calc., 405, see p. 412.

referred the case to the High Court, and in his letter of reference said: "I think that in this case the Magistrate's order is contrary to the law as at present settled. The offence for which the prisoner was tried was theft under s. 380 of the Indian Penal Code, and this not being an offence exclusively triable by the Court of Session, the Magistrate had not the power to commit."

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MARKBY, J. — The Deputy Magistrate, Moulvie Abdool Guffoor, discharged the accused; but, on the application of the complainant, the District Magistrate has committed him to the Court of Session, notwithstanding that objection to his jurisdiction was raised. The Magistrate appears to have considered that he had jurisdiction, because, this being a case regarding an offence triable by the Court of Session as well as by a Magistrate, he could act under s. 296 of the Code of Criminal Procedure.

The Sessions Judge has referred the case to have this commitment set aside as illegal.

The grounds on which the Magistrate held that he could re-open this case are bad, as it has been held that the term "sessions case" in s. 296 means a case triable exclusively by the Court of Session. But we think that the commitment should be maintained on another ground.

The Deputy Magistrate discharged the accused without examining the principal witness in the case, the woman who was alone present in the house when it was robbed, because, as the Sessions Judge expresses it, "she was reported not over-strong in the head." The Deputy Magistrate's order was, therefore, bad; and under the rule laid down in the case of *Empress v. Donnelly* (1) the District Magistrate was competent to revive the proceedings, further evidence being available.

We, therefore, decline to interfere.

(1) I. L. R., 2 Calc., 405, see p. 412.