

CRIMINAL REFERENCE.

Before Mr. Justice Ghose and Mr. Justice Gordon.

IN THE MATTER OF ANANDA CHUNDER SINGH (ACCUSED) v. BASU
MUDH (COMPLAINANT).^u

1896
October 30.

Magistrate, Jurisdiction of—Disqualification of Magistrate to try case—Criminal Procedure Code (Act X of 1882), ss. 202, 540, 555—Summons case.

Where a Magistrate before whom a complaint was made held an enquiry under section 202 of the Criminal Procedure Code for the purpose of ascertaining the truth or falsehood of the complaint before issuing process, and, after holding such enquiry, summoned the accused, examined witnesses on both sides, and, after a short adjournment, examined a witness called by himself, and found the accused guilty under section 341 of the Penal Code,

Held, that there is nothing in the Criminal Procedure Code which disqualifies a Magistrate who holds a preliminary enquiry under section 202, from trying the case himself, and that the provisions of section 555 have no application, inasmuch as the Magistrate had not initiated or directed the proceedings against the accused person, nor taken an active part in the arrest or collection of evidence against such person.

Held, also, that the Magistrate was strictly within his rights under section 540 of the Criminal Procedure Code in receiving fresh evidence after evidence on both sides had been taken and the case adjourned for judgment, inasmuch as the case was still a pending case when such evidence was taken.

THIS was a reference to the High Court under section 438 of the Criminal Procedure Code.

The facts appear from the following letter of reference :—

“The applicant, who is a Police constable, has been convicted by Mr. J. N. Gupta, Officiating Joint Magistrate of Khurdah, of having wrongfully confined two boys in the Police station under section 341, Indian Penal Code. The intention alleged was to have unnatural intercourse with the boys, but this was disbelieved, and the intention found by the Magistrate appears to be *zulum*.

“The trial appears to have been vitiated by several faults. In the first place the Magistrate held a preliminary enquiry into the truth of the complaint and examined witnesses, and afterwards tried the case himself, instead of making it over to another Magistrate for trial. Several rulings have been cited, and it seems the principle of the rulings in *Gurish Chunder*

^u Criminal Reference No. 258 of 1896 made by Mr. F. E. Pargiter, Esq., Sessions Judge of Cuttack, dated 10th November 1896.

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Ghose v. Queen-Empress (1) and *Sudhama Upadhya v. Queen-Empress* (2) apply to this case.

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"In the next place the Magistrate after examining the witnesses for the defence on 17th August adjourned the case to the next day for judgment; but on that day he examined a witness, Bhabani Behara, father of one of the two boys who were the subjects of the offence, and then delivered judgment. This man is called a witness cited by the Court, but he ought to have been a witness for the prosecution, because he professed to have witnessed the occurrence, and his testimony is as important as that of any other person. I may also note here that the complainant Basu was recalled and further examined, but it does not appear on what day, as no date is given.

"The Magistrate has submitted an explanation. After holding a preliminary enquiry and coming to a conclusion adverse to the accused, he undertook the trial himself, and after taking all the evidence on both sides and adjourning the case for judgment, as if the evidence was closed, he suddenly supplemented the evidence by calling a witness, who is really one of the most important prosecution witnesses, and then delivered judgment. It cannot be said on these facts that the accused has had an impartial trial, and on this ground alone the trial should in my opinion be set aside.

No one appeared for the parties on the reference.

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

We are unable to agree with the Sessions Judge in the views he has expressed. The offence, with which the accused was charged, was one which fell under section 341 or 342 of the Penal Code. It was a summons case; and the Joint Magistrate, before whom the complaint was made, held, under section 202 of the Criminal Procedure Code, an enquiry for the purpose of ascertaining the truth or falsehood of the complaint before issuing process against the accused. After holding such enquiry, he summoned the accused, and then after examining such witnesses as either party adduced, and a witness called by himself, found the accused guilty under section 341 of the Penal Code. We do not think that there is anything in the Code of Criminal Procedure which disqualifies a Magistrate, who holds a preliminary enquiry under section 202 of the Criminal Procedure Code from trying the case himself; and the provisions of section 555 have, we think, no application to the circumstances of this case. The two cases quoted by the Sessions Judge, *Girish Chunder Ghose v. Queen-Empress* (1) and

(1) I. L. R. 20 Calc., 867.

(2) I. L. R. 23 Calc., 328.

Sudhama Upadhyaya v. Queen-Empress (1) proceed upon the principle that when a Magistrate initiates or directs the proceedings against an accused person and takes an active part in the arrest of or collection of evidence against such person, he is disqualified by reason of the provisions of section 555 of the Criminal Procedure Code from trying the case himself, and that a disqualifying interest as contemplated by that section may result from a purely official connection with the initiation of criminal proceedings. In the present case that principle is not applicable. Here, the complaint was in the ordinary course made before the Sub-Divisional Officer; he held an enquiry as authorized by section 202 of the Code, and eventually, upon the evidence recorded in the presence of the accused, found him guilty. There is nothing to indicate that he initiated or directed the proceedings or took any personal interest in the matter of the complaint instituted before him, and we do not think that he was disqualified in any way from trying the case.

It was perhaps irregular on the part of Mr. Gupta, the Joint Magistrate, in calling for and examining a witness after the evidence on both sides had been taken and the case adjourned for judgment; but it does not appear to us that the accused was in any way prejudiced by the action of the Magistrate, and indeed it may well be said that he (the Magistrate) was strictly within his rights under section 540 of the Code, for the case was still a pending case, when the fresh evidence was taken.

Upon these grounds we decline to interfere in this matter.

C. E. G.

APPELLATE CIVIL.

Before Mr. Justice Banerjee and Mr. Justice Rampini.

GOPINATH CHAKRAVARTI AND OTHERS (PLAINTIFFS) *v.* UMAKANTA DAS ROY AND OTHERS (DEFENDANTS).^a

Bengal Tenancy Act (VIII of 1885), sections 56, clause (4), 187, clause (3) and 188—Joint landlords—Authorised Agent—Receipt given by Agent—Presumption under section 56, clause (4) of Act VIII of 1885.

^a Appeal from Appellate Decree No. 1451 of 1895, against the decree of E. Geaki, Esq., District Judge of Mymensingh, dated the 9th of May 1895, affirming the decree of Babu Krishna Chandru Chatterjee, Subordinate Judge of that District, dated the 27th of August 1891.

(1) I. L. R., 23 Calc., 328.

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December 4