

## APPELLATE CRIMINAL.

*Before Mr. Justice Macpherson and Mr. Justice Morris.*

THE QUEEN v. GOBIN TEWARI AND ANOTEHR.

1876  
April 7.

*Criminal Procedure Code (Act X, 1872), s. 272—Arrest pending Appeal.*

In an appeal under s. 272 of Act X of 1872, the High Court has power to order the accused to be arrested pending the appeal.

IN this case, the accused Gobin Tewari and Jodoo Lall had been tried on a charge of murder by the Sessions Judge of Bhaugulpore, and released: and against this acquittal, the Government appealed. On the admission of the appeal, the *Legal Remembrancer* applied for the re-arrest of the accused.

[MACPHERSON, J.—Why should not the prisoners be re-arrested under s. 92 of the Criminal Procedure Code?] (1).

*The Legal Remembrancer* (Mr. H. Bell) submitted that the Court had power to order the arrest of the accused persons. It was true that s. 272 did not expressly give the Court this power, but it was a power which was impliedly vested in the Court. Where a Court had jurisdiction over an offence, it had of necessity power to bring the persons accused of the offence before it—*Bane v. Methuen* (2).

The admission of the appeal revived the charge against the accused; and it was absurd to treat persons accused of murder as mere respondents in an appeal. Before the appeal was heard, the accused ought to be in the custody of the law. If the accused were treated as respondents, and merely served with notice of the appeal, it would be open to them after the appeal had been heard, and a capital sentence had perhaps been passed upon them, to plead that they had never been served with notice of the appeal. In such a case what would the Court do. There was no

(1) See *Queen v. Gholam Ismail*, I. L. R., 1 All., 1.

(2) 2 Bing., 63.

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provision in the law for rehearing an appeal. Under s. 297, when the Court ordered that an accused person who had been improperly discharged be tried, it was not disputed that the Court could order the re-arrest of the accused person though there was no express provision on the point in the section: and in the same way he submitted that the Court had equal authority to direct the re-arrest of the accused on the admission of an appeal under s. 272.

MACPHERSON, J.—Let the Magistrate be directed to re-arrest Gobin Tewari and Jodoo Lall, and keep them in custody till the hearing of the appeal.

*Application granted.*

*Before Mr. Justice Macpherson, Mr. Justice Markby, and Mr. Justice Morris.*

1876

March 28.

IN THE MATTER OF THE PETITION OF MOHESH MISTREE AND ANOTHER.\*

*Criminal Procedure Code (Act X of 1872), ss. 294, 295, 296, and 297—Order of Discharge under s. 215—Revival of Proceedings.*

An order of a District Magistrate, directing the revival of certain criminal proceedings against the petitioners who had been discharged under s. 215 of the Criminal Procedure Code by a Subordinate Magistrate after evidence had been gone into, quashed as illegal and *ultra vires*.

As the case was one of improper discharge and came before the Magistrate under s. 295 of the Criminal Procedure Code, the proper and only course for him was to report it for orders to the High Court, which, if of opinion that that the accused were improperly discharged, might, under s. 297, have directed a retrial.

The case of *Sidya bin Satya* differed from.

APPLICATION to set aside an order of the Magistrate of Alipore for the revival of certain criminal proceedings against the petitioners, discharged by the Cantonment Magistrate of Barrackpore under s. 215 of the Code of Criminal Procedure.

The facts of the case material to this report are as follow:—  
In July 1875, one Gopal Malla charged the petitioners with

\* Criminal Motion, No. 53 of 1876, against the order of the District Magistrate of the 24-Pergunnas, dated the 10th February 1876.