

Before Mr. Justice Markby and Mr. Justice Prinsep.

1877
May 3.

THE EMPRESS v. JOY HARI KOR.

Lunatic—Security—Criminal Procedure Code (Act X of 1872), ss. 426, 432.—Jurisdiction of Criminal Courts.

The authority of the Criminal Courts over an accused, declared under s. 426 of the Criminal Procedure Code to be of unsound mind, ceases after the transmission of such accused to the place of safe custody appointed by the Local Government, and such authority can only be revived under the circumstances mentioned in s. 432.

ON the 29th of June, 1869, one Joy Hari Kor, a native of Munshigunge, Dacca, was tried before the Deputy Commissioner of Cachar on a charge of an attempt to commit suicide. The Court found him to be of unsound mind and incapable of making a defence, and procured his transfer to the Dacca Lunatic Asylum. Subsequently an application was made by a brother of the lunatic, under s. 426 of the Criminal Procedure Code, to the Magistrate of Dacca, offering the security required by the Act, and demanding that the lunatic be entrusted to his care. A reference was made to the High Court asking for the transfer of the case of the lunatic, originally tried at Cachar, to the file of Magistrate of Dacca, in order that such Court might the more conveniently deal with the application made under s. 426 of the Criminal Procedure Code.

The judgment of the Court was delivered by

MARKBY, J.—We think that we ought not to make the order asked for, because, even if the case were transferred to the Magistrate of Dacca, we do not think he would have power to release the lunatic upon taking security. The authority of the Magistrate appears to us to cease when the lunatic is handed over to the care of the Local Government, and it does not revive until the prisoner is sent back to the Magistrate under s. 432 on a certificate that he is capable of making his defence. The Deputy Commissioner can, if he thinks proper, bring the matter to the notice of the Government.

Application refused.