

1878

IN THE
MATTER OF
TROYLOKHA-
NATH BISWAS
AND
RAM CHURN
BISWAS.

quash that report as we are asked to do, nor has it been suggested that any good result would ensue in the ends of justice by any re-opening of the enquiry, since it is admitted that nothing is forthcoming or likely to be elicited which would throw any fresh light on the circumstances attending the death of Ramgotti Biswas.

Before Mr. Justice Markby and Mr. Justice Prinsep.

1878

April 30.

SUFFERUDDIN v. IBRAHIM *

Jurisdiction—Bench of Magistrates—Criminal Procedure Code (Act X of 1872), ss. 50, 530.

A Bench of Magistrates has no power to deal with cases coming under s. 530 of the Criminal Procedure Code. A Bench may be empowered under s. 50 of the Code "to try such cases or such class of cases only and within such limits as the Government may direct." The definition of the term "trial" shows that it refers to trials for offences, and these do not come within the miscellaneous matters mentioned in s. 530.

THE reference in this case was as follows :—

"There is a dispute between Ibrahim and Sufferuddin concerning the possession of some lands. The former claims the land as being in his own cultivation as his howlah lands subordinate to the brahmatur tenure of Gobinda Chandra Banerjee in Kismut Kistokate. The latter sets up a *burga* right (1), and claims to be in direct possession. Subsequently, on the application of Ibrahim, the Magistrate of the district took up the matter under s. 530 of the Criminal Procedure Code, and made the case over for trial to Baboo Trailokhya Nath Sen, Deputy Magistrate exercising second class powers, with directions to try it in the Bench over which he presided with first class powers. The Bench, consisting of the Deputy Magistrate with the Honorary Magistrate Baboo Chundra Nath Sen, took the case up and examined all the witnesses on behalf of Sufferuddin and two of the important witnesses on behalf of Ibrahim. But at a later stage, a Bench, consisting of the same Deputy Magistrate

* Criminal Reference, No. 26 of 1878, by H. C. Sutherland, Esq., Sessions Judge of Backergunge, dated the 16th April 1878.

(1) Tenure for which rent is paid in kind.

and another Honorary Magistrate, Moulvie Mohamed Fazil, examined the rest of the witnesses, finally disposed of the case, and directed that Ibrahim should retain possession of the land until ousted by due course of law.

1878
 SUFFERBUDDIN
 v.
 IBRAHIM.

“It is first urged in this case that the evidence has been improperly received, inasmuch as the witnesses were heard, some by one Bench, and others by another Bench of Magistrates. It appears from the record that the witnesses for the second party were all examined by a Bench consisting of the Deputy Magistrate with an Honorary Magistrate Baboo Chundra Nath Sen, who also examined two of the most important witnesses,—*viz.*, Shita Nath and Nobin, to prove relinquishment on behalf of the first party. At a later stage of the case three witnesses were examined for the first party by a Bench consisting of the same Deputy Magistrate and an Honorary Magistrate, Moulvie Mohamed Fazil, and that the final order was passed by this last Bench of Magistrates. Now this proceeding is altogether illegal, Moulvie Mahomed Fazil, who decided the case, knew nothing whatever of the case for the second party, and his knowledge of the case for the first party was very imperfect.

“It is next urged that there is no evidence to support the order. This, I think, is pretty clear from the Deputy Magistrate’s explanation, who says that more stress was laid on the Sub-Inspector’s report than on the evidence of the witnesses. The Sub-Inspector’s report is no evidence at all. Had he been examined it would have been a very different thing altogether.

“I think that the order ought not to stand, and under the circumstances stated above, recommend that it be set aside.”

PRINSEP, J.—In addition to the reasons stated by the Sessions Judge we are of opinion that it was not competent to a Bench of Magistrates to deal with a case under s. 530. A Bench may be empowered under s. 50 “to try such cases or such classes of cases only and within such limits as the Government may direct.” The definition of the term “trial” shows that it refers only to trials for offences, and not to miscellaneous matters such as those coming within s. 530. So that in this view of the law also the order passed was illegal: it is accordingly set aside.