

CRIMINAL REFERENCE.

Before Mr. Justice Mitra and Mr. Justice Core.

1907

June 27.

BUDHAN MAHTO

v.

ISSUR SINGH.*

Jurisdiction—Cattle Trespass Act (I of 1871) s. 20—Illegal seizure of cattle “Offence”—Power of District or specially authorized Magistrate to transfer such case—Subordinate Magistrate, power of, to try—Criminal Procedure Code (Act V of 1898) ss. 4(o), 192, and Sch. II, last clause.

The illegal seizure or detention of cattle, referred to in s. 20 of the Cattle Trespass Act (I of 1871), is an “offence” under s. 4(o) of the Criminal Procedure Code of 1898, and is, by virtue of the last clause of Sch. II thereof, triable by any Magistrate; and though, under s. 20 of the Cattle Trespass Act, a complaint of such illegal seizure or detention must be entertained by a District Magistrate or one specially authorized as required by the section, (such Magistrate has power, under s. 192, to transfer such cases, after taking cognizance, to any Subordinate Magistrate for trial.

Shama v. Lechhu Shekh(1) and *Raghu Singh v. Abdul Wahab*(2) declared obsolete.

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The complainant, Budhan Mahto, laid a charge before the Sub-divisional Magistrate of Bihar, under s. 20 of the Cattle Trespass Act (I of 1871), against the petitioners, Issur Singh and Keswar Singh, of illegal seizure of his cattle. The Sub-divisional Officer transferred the case to the file of Babu S. K. Kaviraj, a local Sub-Deputy Magistrate, not specially empowered, under s. 190 of the Criminal Procedure Code, to receive and try charges without reference by the District Magistrate; and he after enquiry ordered the petitioners to pay compensation to the complainant.

The petitioners then moved the Sessions Judge of Bankipur who called upon the Sub-Deputy Magistrate for an explanation.

* Criminal Reference Nos. 113 and 113A of 1907 by H. W. C. Carnduff, Sessions Judge of Patna, dated June 15, 1907.

(1) (1895) I. L. R. 23 Calc. 300.

(2) (1896) I. L. R. 23 Calc. 442.

The latter submitted that illegal seizure of cattle was now an "offence" under the amended definition of the term in s. 4 (o) of the Code of 1898; that according to Schedule II thereof, under the column "*Offences against other laws,*" any offence punishable with imprisonment for less than one year or with fine only is triable by any Magistrate; and that the Sub-divisional Magistrate could, therefore, under s. 192 of the Code, transfer such cases to him for trial. He also submitted that the decision in *Raghu Singh v. Abdul Wahab*(1) was now obsolete. The learned Sessions Judge, differing from the Sub-Deputy Magistrate, referred the case to the High Court under s. 438 of the Code, on the authority of *Shama v. Lechhu Shekh* (2) and *Raghu Singh v. Abdul Wahab* (1).

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No one appeared on this reference.

MITRA AND COXE JJ. Sections 20 to 23 of Act I of 1871 (The Cattle Trespass Act) conferred, no doubt, a special jurisdiction on certain Magistrates, but section 4, cl. (o) of the Code of Criminal Procedure (Act V of 1898) includes within the definition of the word *offence* "any act in respect of which a complaint may be made under section 20 of the Cattle Trespass Act, 1871." Section 260 cl. (m) of the Code makes offences under section 20 of the Cattle Trespass Act, 1871, triable summarily. Thus under the Code of 1898, cases under section 20 of the Cattle Trespass Act come within the ordinary jurisdiction of the Magistracy and there is no reason now for holding that these cases should be dealt with in any way different from any other offence. *Shama v. Lechhu Shekh*(2), and *Raghu Singh v. Abdul Wahab*(1) appear to have been overruled by the Legislature.

Section 192, sub-section (1) gives ample authority to a Sub-divisional Magistrate to transfer any case of which he has taken cognizance for trial to any Magistrate subordinate to him, provided the latter is otherwise competent to try the case. The last clause of Schedule II of the Code of 1898 makes any "offences against other laws" punishable with imprisonment for less than

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 ISSUR SINGH. one year or with fine only, triable by any Magistrate. There cannot, therefore, be any doubt as to the competency of S. K. Kaviraj, Sub-Deputy Magistrate of Bihar, to try the cases under reference.

Section 20 of the Cattle Trespass Act enables a person whose cattle have been seized in contravention of the Act to make a complaint to the Magistrate of the District or any other Magistrate authorized to receive and try such charges without reference by the Magistrate of the District. The section gave an exclusive jurisdiction to receive and try complaints, and no authority was given to transfer such cases for trial by a subordinate Magistrate. That authority has now been given by the Code of Criminal Procedure. It is clear to us, therefore, that though a complaint under section 20 of the Act must be entertained either by a District Magistrate or a Magistrate especially authorized, such Magistrate has now power to transfer the case, after taking cognizance of it, to any Subordinate Magistrate as contemplated by the Code.

We, therefore, direct that the orders of the Sub-Deputy Magistrate of Bihar be affirmed.

E. H. M.