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CRIMINAL REFERENCE.

Before Mr. Justice Banerjee and Mr. Justice Handley.

EMPEROR

v.

JOGESHWAR PASSI.*

1903

Aug. 11.

Coroner, inquisition by—Commitment—Presidency Magistrate, power of, to enquire into a case committed by Coroner—Discharge or acquittal by Presidency Magistrate, effect of—Bail—Coroners' Act (IV of 1871) ss. 24, 25, 26, 27, 29—Prisoners Act (III of 1900) s. 11—Criminal Procedure Code (Act V of 1898) ss. 213, 214, 215, 477, 478, 498.

An inquisition drawn up by the Coroner of Calcutta under the Coroners' Act against an accused person, although it may have the effect of a valid commitment upon which the High Court in the exercise of its Original Criminal Jurisdiction may act, has not that effect until it has been accepted by the High Court, and the Officers of the Crown have drawn up a charge in accordance with it.

Such a commitment by the Coroner does not of itself oust the jurisdiction of a Presidency Magistrate to inquire into, commit or try the case; and until the High Court has accepted such commitment, any order of acquittal or discharge made by such Magistrate in the case will be operative subject to the discretion of the High Court whether it should take action upon the inquisition of the Coroner as an effective commitment.

Queen-Empress v. *Mahomed Rajudin* (1) referred to.

After a Coroner has drawn up an inquisition against a person and committed him to prison, the High Court alone is empowered to release such person on bail.

REFERENCE by the Presidency Magistrate, Northern Division, Calcutta, under s. 432 of the Criminal Procedure Code.

* Criminal Reference No. 7 of 1903, made by A. Rahim, Presidency Magistrate of Calcutta, Northern Division, dated Aug. 4, 1903.

(1) (1890) I. L. R. 16 Bom. 159.

1903

EMPEROR v. JOGESHWAR PASSI.

A tramway accident occurred in the Chitpore Road and a little girl named Boori Chokri was run over and killed. At the time of the accident Jogeshwar Passi was driving the tram-car and Darsan Jeswara was standing on the car instructing him in driving it. The Coroner of Calcutta held an inquest on the body of Boori Chokri. On the 18th June 1903, while the inquest was pending, Jogeshwar Passi was placed before the Presidency Magistrate of the Northern Division of Calcutta charged under s. 304A of the Penal Code with having caused the death of Boori Chokri by negligence; and on the next day Darsan Jeswara was brought up before the same Magistrate, also charged under the same section of the Penal Code with reference to the same offence. Both the accused were released on bail, and as the inquest was not closed, the case was adjourned.

On the 14th July the Coroner's inquest was closed and the Jury returned a verdict attributing the death of Boori Chokri to the rash and negligent act of Jogeshwar Passi. The Coroner drew up an inquisition under section 24 of the Coroners' Act, IV of 1871, and under s. 26 of the same Act had Jogeshwar Passi apprehended, and committed him to prison.

On the 4th August the case of Jogeshwar Passi again came up before the Presidency Magistrate, who not being certain as to whether he had any further jurisdiction to proceed with the inquiry into the case, made the following reference to the High Court under s. 432 of the Code of Criminal Procedure:—

"Jogeshwar Passi was placed before me on the 18th June charged under section 304A, Indian Penal Code, and the next day Darsan Jeswara was brought up, also charged under the same section of the Penal Code, with reference to the same occurrence. I released both of them on bail; and as the inquest on the body of Boori Chokri, whose death is alleged to have been caused by the rash and negligent act of these two accused persons, was not then closed, I allowed the case to stand over.

"On the 14th July last the Coroner's inquest was closed, and the Jury having returned a verdict attributing the death of Boori Chokri to the rash and negligent act of Jogeshwar Passi, the Coroner of Calcutta drew up an inquisition on the terms of section 24 of the Coroners' Act (Act IV of 1871), and under section 26 had Jogeshwar Passi (who was then on bail under my order and, I am informed, attending the Coroner's inquest) apprehended by his warrant and committed him to prison until he be thence discharged in due course of law, and under section 25 had the witnesses who gave evidence before him bound down by recognizances to appear at the next Criminal Sessions to give evidence against Jogeshwar Passi.

1903

EMPEROR v. JOGESHWAR PASSI.

"The question has now arisen as to whether I have any further jurisdiction to proceed with the inquiry into the case of Jogeshwar Passi. If the High Court in its Original Criminal Jurisdiction has seisin by virtue of the steps taken by the Coroner of Calcutta of Jogeshwar Passi's case, have I, as a Subordinate Court, power to deal with him with respect to the same offence, an offence under section 304A of the Indian Penal Code, being one which I may either try myself or commit the person charged with it for trial to the High Court.

"This question involves, as it seems to me, a preliminary question, *viz.*, whether what has been done by the Coroner of Calcutta in this case under the power vested in him by Act IV of 1871 would have the effect of placing Jogeshwar Passi on his trial at the next High Court Criminal Sessions, like a committal by a Presidency Magistrate. In this connection it becomes necessary to enquire as to whether the phrase, until discharged in due course of law, as used in section 26, means an order to be passed at the High Court Criminal Sessions, or whether it would include an order of a Presidency Magistrate as the result of an inquiry by him. It seems to me that not only the entire scheme of the Coroners Act, but also section 11 of the Prisoners Act (III of 1900) throws light on the question. If it be held that, in spite of the action taken by the Coroner of Calcutta in this matter, I have jurisdiction to proceed with the case of Jogeshwar Passi, I would next solicit the opinion of the High Court as to the extent I am entitled to exercise the powers vested in me by the law:—

"*First*, whether the order for bail passed by me in the case of Jogeshwar Passi is still operative, or whether I am at liberty, if I consider it to be necessary, to pass a fresh and effective order for bail?

"*Secondly*, if after enquiry into this case I acquit Jogeshwar Passi or discharge him, would that order be effective by its inherent force as in ordinary cases tried or enquired into by me?

"*Thirdly*, is the Crown entitled to ask me to commit Jogeshwar Passi for a second time since one of the two commitments—if what has been done by the Coroner has the effect of a commitment—must be superfluous?

"The last three questions might possibly be answered by inferences drawn from the answer to the main question involved, *viz.*, whether the steps taken by the Coroner of Calcutta in exercise of his powers have the effect of taking the case of Jogeshwar Passi out of my hands. I, however, respectfully solicit an expression of opinion on these questions separately, because that alone would satisfactorily settle the practice to be followed in similar cases by the Coroner of Calcutta and the Presidency Magistrates, respectively.

"I am aware of only one ruling of an Indian High Court on the subject, *viz.*, that in the case of *Queen-Empress* v. *Mahomed Rajudin* (1), which lays down in answer to a reference made by the Second Presidency Magistrate of Bombay, the proposition that the drawing up of an inquisition by the Coroner does not oust the jurisdiction of a Presidency Magistrate. But I find no explicit answer in that ruling to the other questions I have just formulated, and further it appears to me desirable that there should be an authoritative decision of the Calcutta High Court setting at rest all doubt upon the subject.

(1) (1890) I. L. R. 16 Bom. 159.

1903

EMPEROR v. JOGESHWAR PASSI.

"At the request of the Government Prosecutor I have not proceeded against Darsan Jeswara alone, as it is desirable that the case of both should be enquired into and tried together. Darsan Jeswara is on bail under order of this Court, and Jogeshwar Passi is now in prison under a warrant of commitment issued by the Coroner. I have adjourned this case to the 11th instant pending the order of the High Court on this reference."

The Standing Counsel (*Mr. J. G. Woodroffe*) for the Crown. I submit that the Coroner has power to commit: see the Coroners' Act, IV of 1871, ss. 25 and 26; the Prisoners Act, III of 1900, s. 11; and *In re William Taylor* (1). In the case of *Suresh Chunder Chuckerbutty* (2) in the second Criminal Sessions on the 30th April 1891, the Court (HILL J.) was of opinion that the Coroner had no power to commit; but the same Judge in the first Criminal Sessions 1893 held after argument that the Coroner's commitment in the case of *Kali Churn Das* v. *Shaik Mahomed Tindal* (3) was good, and that he would proceed to try the prisoner on the commitment. The then Standing Counsel, Mr. Phillips, requested the Judge to read the depositions, as he had no power of entering a *nolle prosequi*, and could act only under the direction of the Court. The Court, however, observed that it was in the power of the Standing Counsel not to offer any evidence, that no charge need be drawn up, but that the case could proceed under the inquisition. Subsequently, the Standing Counsel submitted that there was no evidence upon which the Jury could convict, but inasmuch as evidence might afterwards be procurable, he asked that the accused be discharged under s. 273 of the Code. The Court was, however, of opinion that, under the circumstances, as no evidence had been offered, the prisoner should be acquitted, and it accordingly directed the Jury to return a verdict of not guilty, which they did.

The commitment of the Coroner consists of his return of the evidence, inquisition, and recognisances to the High Court.

The High Court can and will if necessary accept and act upon the commitment so made to it. But although the Coroner has power to commit and the High Court has power to accept the commitment, the latter as a matter of practice does not act upon such commitments, but prefers to act upon the commitment by

(1) (1867) 2 Ind. Jur. (N. S.) 101.

(2) (1891) Unreported.

(3) (1893) Unreported.

the Magistrate. So far as my enquiry goes, in no case has the High Court acted upon the commitment of the Coroner except in the case I have already referred to in which, however, there was no trial, as no evidence was offered by the Crown.

It would be inconvenient to the prosecution and to the accused if any other course were to be adopted. The fact that there has been a commitment by the Coroner does not, however, oust the jurisdiction of the Magistrate: *Queen-Empress* v. *Mahomed Rajudin* (1). The jurisdiction of the Coroner and that of the Magistrate is concurrent, and there is nothing either in the Code or the Coroners' Act which affects their jurisdictions respectively. The jurisdiction of the Magistrate is not affected until the High Court acts upon the commitment by the Coroner and enters upon the trial of the accused. In this case there is a joint inquiry into an offence alleged to have been committed by the accused and another person, the latter being entirely unaffected by the Coroner's inquisition.

As regards, however, the question of bail, a difficulty arises from the conflict of the jurisdictions. If effect is to be given to either of the orders of the Magistrate or Coroner, the order of the former has priority. The safe course, however, would be for this Court to grant bail. Should the Magistrate discharge the accused upon the inquiry, the Crown will doubtless offer no evidence at the Sessions.

Babu Prosanna Gopal Roy for the accused. I leave the matter in the hands of the Court, but submit that the accused should be released on bail.

BANERJEE AND HANDLEY JJ. This is a reference under section 432 of the Code of Criminal Procedure by the Presidency Magistrate of the Northern Division of Calcutta in which he has submitted for the opinion of this Court the following question, namely, whether he has jurisdiction to proceed with the enquiry into the case of a person accused of an offence punishable under section 304A of the Indian Penal Code after the Coroner of Calcutta has drawn up an inquisition under section 24 of the Coroners' Act, IV of 1871, bound down the witnesses under section

(1) (1890) I. L. R. 16 Bom. 159.

1903

EMPEROR v. JOGESHWAR PASSI.

25 of that Act and committed the accused to prison under section 26.

That is the main question that arises for determination upon the Presidency Magistrate's reference; and there are the following subsidiary questions also submitted by the Magistrate in his reference for our opinion, namely, (i) whether the order for bail passed by him in the case of the accused Jogeshwar Passi is still operative, or whether the Magistrate is at liberty, if he considered it to be necessary, to pass a fresh order for bail; (ii) if after enquiry into the case he acquits Jogeshwar Passi or discharges him, would that order be effective by its inherent force as in ordinary cases tried or inquired into by the Magistrate; and (iii) is the Crown entitled to ask the Magistrate to commit Jogeshwar Passi for a second time, when one of the two commitments, if what has been done by the Coroner has the effect of a commitment, must be superfluous.

The questions that arise for determination in this reference are not altogether free from doubt and difficulty. The Coroners Act which is a special enactment is, as section 1 of the Code of Criminal Procedure provides, unaffected by that Code. On the other hand there is nothing in the Coroners' Act which affects the jurisdiction of the Presidency Magistrate under the Code of Criminal Procedure. And the result may be, as we think it is in this case, the existence of two concurrent jurisdictions one in the Coroner and the other in the Presidency Magistrate, to deal with the same matter, though in modes somewhat different in certain respects. This simultaneous exercise of two concurrent jurisdictions may lead to conflict and anomaly such as have been indicated in the Magistrate's reference, and to avoid this the view which the Magistrate is apparently inclined to take, is, that he is ousted of his jurisdiction after the inquisition is drawn up by the Coroner and the accused is taken into custody or released on bail, if the drawing up of the inquisition by the Coroner against the accused person is to have the effect of a commitment of the accused to the High Court in the exercise of its Original Criminal Jurisdiction.

The first question then for consideration is whether the inquisition drawn up by the Coroner has that effect. We feel bound to answer this question in the affirmative in view of the provisions

contained in sections 24 to 27 and 29 of the Coroners Act, IV of 1871, and of section 11 of the Prisoners Act, III of 1900 which contemplates commitment of an accused person by a Coroner for trial by the High Court in the exercise of its Orginal Criminal Jurisdiction; and in view also of an unreported decision of this Court to which our attention was called by the Standing Counsel, in which it was held by Mr. Justice Hill that an inquisition drawn up by a Coroner was a valid commitment of the accused, though at the same time it so happened that nothing came out of that commitment, the learned Standing Counsel for the Crown not having offered any evidence and the Jury being thereupon directed to return a verdict of not guilty. But though an inquisition drawn up by the Coroner may have the effect of a valid commitment of the accused for trial by the High Court in the exercise of its Original Criminal Jurisdiction, it is contended by the learned Standing Counsel that that does not necessarily oust the Presidency Magistrate of his jurisdiction to inquire into the case, or even to try the case, if the offence in respect of which the accusation is made, is one that is triable by the Magistrate. No doubt this contention is apparently opposed to the principle that an inferior Court is ousted of its jurisdiction to try or to inquire into a case, whilst a superior Court has seisin of it. But the contention is sought to be reconciled with the principle in this way, namely, that as a matter of practice for a long series of years the inquisition of the Coroner has not been acted upon as a commitment, and what has been acted upon has almost invariably been a commitment by the Magistrate. And where, as in the unreported case above referred to, the inquisition drawn up by the Coroner has not been followed by a commitment by the Magistrate, the officers of the Crown have declined to offer any evidence and the accused has been either acquitted or discharged, though it has been contended the High Court could act upon the Coroner's inquisition notwithstanding the order of discharge by the Magistrate. The practice has no doubt been as has been stated above. Several reasons have also been advanced in favour of the view that the drawing up of an inquistion by the Coroner should not be held to have the effect of ousting the Magistrate of his jurisdiction.

1903

EMPEROR v. JOGESHWAR PASSI.

In the first place it is pointed out that the inquiry before the Coroner is primarily an inquiry into the cause of death irrespective of the question whether it was caused by the criminal act of any person, whereas in an inquiry before the Magistrate the primary question for determination is who is the person who has caused the death of the deceased or whether the person accused should be proceeded against. Then in the second place it is pointed out that the inquiry before the Coroner may be, as it very often is, in the absence of the accused; whereas that before the Magistrate proceeds in his presence; and if the inquiry before the Coroner is to oust the Magistrate of his jurisdiction, the result would be that the accused would be deprived of the opportunity that he may have of showing by the cross-examination of the witnesses for the prosecution that there is no ground for proceeding against him, and that he ought not to be put on his trial before the High Court.

We are of opinion that there are strong reasons for our accepting as correct the contention of the learned Standing Counsel that the drawing up of an inquisition by the Coroner does not of itself oust the Magistrate of his jurisdiction to inquire into or try the case of an accused person. But to reconcile this view with the principle that a person of whose case a superior Court has seisin cannot be dealt with by an inferior Court, we must hold that an inquisition drawn up by the Coroner, though it may have the effect of a valid commitment upon which the High Court in the exercise of its Original Criminal Jurisdiction may act, has not that effect until it has been accepted by the High Court, and the Officers of the Crown have drawn up a charge in accordance with it.

We may add that the view we take is not in conflict with section 215 of the Code of Criminal Procedure which refers only to commitments under section 213, 214, 477 or 478 of the Code. We may also add that the view we take receives some support from sub-section (2) of section 213 which gives the Magistrate power to cancel the charge and discharge the accused after hearing the witnesses for the defence. This is an advantage of which the accused must be wholly deprived if the Magistrate is to be held to be ousted of his jurisdiction by reason of the Coroner

drawing up his inquisition. The view we take is in accordance with that taken by the Bombay High Court in the case of *Queen-Empress* v. *Mahomed Rajudin* (1).

If in any case the accused person objects to the Magistrate's proceeding with the case against him on the ground of his being already committed for trial to the High Court in the exercise of its Original Criminal Jurisdiction by virtue of the inquisition drawn up by the Coroner, an inquisition which has the chance of being accepted as a valid commitment, and which if so accepted, might subject him to a second trial notwithstanding that the Magistrate might try and acquit him; the difficulty raised would be one that could be solved, we apprehend, only by a proper application to this Court, which, having regard to the circumstances of the individual case, will make such order as it thinks fit, as to whether the commitment by the Coroner is to be acted upon, or whether it is proper for the Magistrate to proceed with the case.

Practically however such objections must be rare as it will be to the advantage of the accused, as we have pointed out above, that the inquiry before the Magistrate should go on. The truth is that the co-existence of the two concurrent jurisdictions namely those of the Coroner and of the Magistrate must occasionally give rise to difficulties that may be solved in individual cases by application to this Court, but they can be removed only by the Legislature stepping in and making necessary changes in the law.

It remains now to answer the three subsidiary questions stated at the outset, namely, *first*, that relating to bail which involves a difficulty having regard to the provisions of section 11 of the Prisoner's Act, III of 1900, under which the Superintendent of Jail in which the prisoner is, is required to produce the prisoner before the Court to which he is committed and not before any other Court. Here again it is only by the intervention of this Court that the accused can be released on bail and brought before the Magistrate. In the case before us we make that order and under section 498 we direct that the accused Jogeshwar Passi be admitted to bail, the amount to be fixed by the Presidency Magistrate.

(1) (1890) I. L. R. 16 Bom 159.

1903

EMPEROR v. JOGESHWAR PASSI.

As to the *second* subsidiary question we think it has already been in effect answered by the observations we have made, which go to show that until the High Court has accepted the inquisition drawn up by the Coroner as a commitment, the Magistrate is not ousted of his jurisdiction, and any order of acquittal or discharge that he may make will be operative, subject of course to the discretion of this Court, when the time comes for it to consider, whether it should take action upon the Coroner's inquisition as an effective commitment.

The *third* subsidiary question, in the view we have already expressed, must be answered in the affirmative, the practice as pointed out above, being to take action upon the commitment by the Magistrate rather than upon the inquisition drawn up by the Coroner.

With the expression of our opinion embodied in the foregoing observations the reference will be sent back to the Presidency Magistrate.

Before concluding we should add that in view of the difficulties pointed out above, the Legislature should step in and make such changes in the law relating to inquests by Coroners as may be deemed necessary or expedient, to avoid any conflict between the two jurisdictions, namely, those of the Coroner and the Magistrate, which in our opinion co-exist.

D. S.