

Emperor Vs. Nanhua

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Court : Allahabad

Decided On : Mar-11-1914

Reported in : AIR1914All45; (1914)ILR36All315

Judge : Piggott, J.

Appellant : Emperor

Respondent : Nanhua

Judgement :

Piggott, J.

1. This is a reference by the Sessions Judge of Budaun asking this Court to quash a commitment for trial to his court by a first class magistrate of that district. The learned Sessions Judge is of opinion that the order of commitment was made without jurisdiction and is consequently bad in law. It appears that the case was one in which action was first taken in respect of an alleged offence under Section 324 of the Indian Penal Code. It was before a bench of magistrates exercising second class powers and not empowered to commit an accused person for trial to the Sessions. The District Magistrate, acting under Section 528 of the Code of Criminal Procedure, transferred the case to a magistrate of the first class. The latter, acting on the evidence which had already been recorded by the bench of magistrates, framed a charge under Section 326 of the Indian Penal Code and passed an order committing the accused for trial to the Court of Session. It does

not appear that the accused demanded to have the witnesses, or any of them, resummoned and re-heard; the presumption is that they did not. The order complained of is an order of commitment, and it seems to me at least open to question whether the Sessions Judge had any concern with the nature of the evidence on the strength of which the committing magistrate had seen fit to pass the order. It certainly could not be said that the order was without jurisdiction after the committing magistrate had become duly seised of the case in consequence of the order under Section 528 of the Code of Criminal Procedure. The Sessions Judge says that the provisions of Section 350 would not override those of Section 208 of the Criminal Procedure Code; but with this general proposition I am unable to agree. In any case Section 350 of the Criminal Procedure Code undoubtedly applies to a magistrate 'succeeding' within the meaning of that section, who may act upon the evidence recorded by his predecessor, and his action may take the form of framing a charge and committing the accused for trial. It has, however, been doubted whether Section 350 of the Code of Criminal Procedure applies at all to cases which have been transferred from one court to another under Section 528 of the Code of Criminal Procedure. In *Queen-Empress v. Bashir Khan* (1893) I. L. R., 14 All., 346 a Judge of this Court seems to have assumed that for a magistrate to proceed after an order of transfer upon the evidence which he found already on the record was at least an irregularity. In that case, however, it was distinctly held that the accused had been prejudiced by the course adopted by the magistrate to whom the case had been transferred. In the present case, assuming that the evidence on the record, if true, does disclose the commission of an offence punishable under Section 326 of the Indian Penal Code, it does not seem to me that the accused can be said to have been in any way prejudiced. The evidence will have to be taken before the Court of Session, and the accused will have every opportunity of cross-examining the witnesses for the prosecution before that court pronounces upon his guilt or innocence. There is one case of this Court which has been referred to by the learned Sessions Judge, namely *Queen-Empress v. Angnu* Weekly Notes 1889 p. 130 in which the view was taken that the provisions of Section 350 of the Criminal Procedure Code would not apply at all to a case which came before another court under an order of transfer, This case, however, has recently been considered by a Bench of the Calcutta High Court in

Mohesh Chandra Saha v. Emperor (1) where the Allahabad ruling was dissented from, and it was expressly laid down that Section 350 of the Criminal Procedure Code is not limited to cases in which magistrates succeed each other in their offices, but applies also to all cases transferred from the file of one magistrate to that of another under Section 528 of the Criminal Procedure Code. This case has been followed in Palaniandy Goundan v. Emperor (2) where stress is laid upon the use of the word 'therein' in Section 350 aforesaid. I am content to follow these rulings, more particularly in a case like the present, where, as I have already pointed out, no possible question of prejudice to the accused person can be said to arise. I accordingly decline to accede to the reference of the learned Sessions Judge and order the record to be returned.

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