

**In Re: J. Wilson**

**In Re: J. Wilson**

**SooperKanoon Citation :** [sooperkanoon.com/851314](http://sooperkanoon.com/851314)

**Court :** Kolkata

**Decided On :** Jan-05-1891

**Reported in :** (1891)ILR18Cal247

**Judge :** Macpherson and ;Banerjee, JJ.

**Appellant :** In Re: J. Wilson

**Judgement :**

**Macpherson and Banerjee, JJ.**

1. This is an application to transfer a case from the Court of the Sub-divisional Officer of Rajmehal to some other Court. The Deputy Commissioner having expressed a doubt as to the jurisdiction of the High Court over criminal Courts in the Sonthal Pergunnahs, it was intimated, when the rule was granted, that the Court would, on the hearing of the rule, consider the question of its jurisdiction to act as a Court of Revision generally, and also, with reference to the fact stated in the affidavit, as to the status of the petitioner as a European British subject.

2. No one appeared to show cause or to support the contention that the Court had no jurisdiction in the matter. Mr. Hill has argued that the Court has jurisdiction over all the criminal Courts in the Sonthal Pergunnahs under the revisional powers conferred upon it by the Code of Criminal Procedure, and that, if this is not so, it has undoubtedly jurisdiction in every case in which the accused person is a European British subject. The legislation in connection with the Sonthal

Pergunnahs is somewhat complicated, and we do not think it necessary in the present case to consider the wide question of the Court's jurisdiction as a Court of Revision over all the criminal Courts in that territory. It is not necessary, because we have no doubt that the Court has full jurisdiction to entertain and deal with an application of the kind now before us in all cases in which the accused person is a European British subject.

3. Act XXXVII of 1855 which is still in force removed the districts comprising the Sonthal Pergunnahs from the operation of the general regulations of the Bengal Code and of the laws passed by the Governor-General of India in Council, and vested the administration of criminal justice in officers to be appointed by the Lieutenant-Governor of Bengal, whose decisions to the extent of the powers conferred upon them by the Lieutenant-Governor according to the provisions of the Act were to be final. But that Act did not affect the laws then in force with respect to the amenability of European British subjects to any Court or officer for acts of a criminal nature. European British subjects were not, therefore, amenable for such acts to the officers appointed by the Lieutenant-Governor of Bengal under the provisions of Act XXXVII of 1855. They remained amenable to the Courts and officers empowered to try them.

4. The law relating to the appointment of Justices of the Peace outside the Presidency towns and to the trial of European British subjects is now embodied in the Code of Criminal Procedure which was brought into force in the Sonthal Pergunnahs by Regulation III of 1886 amending Regulation III of 1872, which was to be read with Act XXXVII of 1855. Magistrates trying charges against European British subjects are therefore, so far at least as regards the mofussil Courts, empowered under the Code of Criminal Procedure, and they must follow the procedure prescribed by that Code. The Code further defines the High Court to mean (so far as we need give the definition for the purposes of this case), in reference to proceedings against European British subjects, the High Court of Judicature at Fort William, and it gives to a European British subject convicted on a trial held by a Magistrate a right of appeal to the High Court. There cannot therefore be a doubt that the Court of a Magistrate in the Sonthal Pergunnahs is, as regards the trial of a European British subject, subordinate to the High Court,

and that the High Court can under Section 526 of the Procedure Code direct the transfer of a case in which such subject is concerned.

5. The whole history of the legislation in connection with European British subjects, into which we need not enter, shows moreover that the jurisdiction of this Court in cases in which they are concerned has always existed and does exist.

6. The question remains whether we should direct the transfer of the case. We have considered the petition of Mr. Wilson, which sets out the facts and the grounds upon which a transfer is asked for, the comments of the Sub-divisional Officer thereupon, and the grounds upon which the Deputy Commissioner refused to order the transfer of the case. We make no reflection on Mr. Ainslie's fairness or impartiality, and do not doubt that he would endeavour to come to a just decision on the evidence adduced; but, having regard to all the circumstances, we are disposed to hold that it is expedient for the ends of justice that the trial should be held elsewhere. There are circumstances which might reasonably lead the petitioner to believe that the Magistrate had to some extent prejudged the case against him, and that he would in consequence be prejudiced in the trial, and if this is so, we think a transfer is expedient. It does not appear that the petitioner was in the first instance charged with taking part in the offences said to have been committed by the persons in whose company he was. The proceedings against him were taken under directions of the Magistrate acting on the police report of the case. The Magistrate may have been quite justified in directing the prosecution of the petitioner, but he was not justified in at once issuing a warrant for his arrest and in having him arrested and brought before him. The case was a summons and not a warrant case. Then the case arose out of a dispute relating to a julkur, the disputants being the prisoner's employer and certain other persons, and there are grounds for believing that the Magistrate had in connection with other proceedings, necessarily perhaps, formed a conclusion unfavourable to the former. On the whole we think a transfer is expedient, and we direct that the case be transferred to the Court of the District Magistrate of Maldah. The District Magistrate will either try it himself or make it over to some other officer competent to try it.