

Hopcroft Vs. Emperor

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Court : Kolkata

Decided On : Nov-06-1908

Reported in : (1909)ILR36Cal163

Judge : Sharfuddin and ;Coxe, JJ.

Appellant : Hopcroft

Respondent : Emperor

Judgement :

Sharfuddin and Coxe, JJ.

1. This is a Rule on the District Magistrate of Mozufferpore to show cause why the case should not be transferred from the file of the trying Magistrate to that of any other Magistrate competent to try the same, on the ground that the trying Magistrate had no jurisdiction to inquire into the matter under Section 443 of the Criminal Procedure Code.

2. Under Section 443 of the Criminal Procedure Code no Magistrate, unless he is a Justice of the Peace, and (except in the case of a District Magistrate or Presidency Magistrate) unless he is a Magistrate of the first class and a European British subject, shall inquire into or try any charge against a European British subject.

3. From the Explanation submitted by the Magistrate there is nothing to show that the petitioner is not a European British-born subject, and we are told that the matter was not at all disputed. The question is whether the expression 'inquire into or try any charge' applies to proceedings under Section 107 or not.

4. The party, against whom proceedings under Section 107 of the Criminal Procedure Code are instituted, is in the position of an accused party, and when he is bound over to keep the peace, his liberty is, to a very great extent, qualified. In *Queen-Empress v. Mutasaddi Lal* (1898) I.L.R. 21 All, 107, it was held that a person, against whom proceedings under Chapter VIII of the Code of Criminal Procedure are being taken, is an 'accused person' within the meaning of Section 437 of the Code. It appears from this case that the learned Judge, who tried it, followed *Queen-Empress v. Mono, Puna* (1892) I.L.R. 10 Bom. 661 and *Jhoja Singh v. Queen-Empress* (1896) I.L.R. 23 Calc 493.

5. If, therefore, the petitioner is an accused person, his case certainly comes under Section 443 of the Criminal Procedure Code and, as a European British-born subject, is entitled to claim that he should be tried by a Justice of the Peace or a District Magistrate or Presidency Magistrate, provided the Justice of the Peace is a Magistrate of the first class and a European British-born subject.

6. In the above circumstances we make the Rule absolute, and direct that the District Magistrate do transfer the case to any Magistrate competent to try the petitioner.