

The Empress Vs. Tsit Ooe

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Court : Kolkata

Decided On : Dec-11-1878

Reported in : (1879)ILR4Cal668

Judge : Richard Garth, Kt. C.J., ;Jackson and ;McDonell, JJ.

Appellant : The Empress

Respondent : Tsit Ooe

Judgement :

Richard Garth, C.J.

1. After fully considering the judgments of the Special Court upon this point, we have no doubt that the conviction and sentence passed by the Judicial Commissioner is subject to appeal to that Court.

2. We entirely agree with the learned Recorder, that the words 'any original jurisdiction' must bear the ordinary natural signification which he puts upon them, and we think it clear that whenever the Judicial Commissioner exercises original jurisdiction, from whatever source derived, in criminal cases, an appeal lies to the Special Court from his decision.

3. Were the law otherwise, we consider that the fair administration of criminal justice might be seriously imperilled, and that the case would call for the immediate interference of the legislature. The Judicial Commissioner would then

have the power, by transferring any case to his own Court, for any reason which might seem sufficient to himself, to exercise an entire control over the proceedings, and to deprive the prisoner of his right of appeal, however unjust or erroneous his decision might be.

4. In fact, we find in this very case a forcible illustration of the danger of such a state of things, because, upon looking at the sections under which the Judicial Commissioner assumed a jurisdiction to try the prisoner, we entertain grave doubts whether he had any power to do so; and unless his jurisdiction could be inquired into by a Court of Appeal, it is by no means clear that the law has provided any other mode of raising the question.

5. We are of opinion, therefore, that, upon the point referred to us, an appeal does lie from the Judicial Commissioner to the Special Court.

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