

CALCUTTA HIGH COURT

Raghu Singh

Vs

Abdul Wahab

(Ghose and Rampini, JJ.)

11.02.1896

JUDGMENT

Ghose and Rampini, JJ.

1. The petitioners in this case have been ordered by Mr. Lloyd, Deputy Magistrate of Purneah, who is a Magistrate exercising second-class powers, to pay the sum of Rs. 44-4 as compensation to a certain person, named Abdul Wahab, for the illegal seizure of his cattle. This order has been passed under Section 22 of Act I of 1871. The petitioners have obtained a rule to show cause why this order should not be set aside, on the ground that the Deputy Magistrate was vested with only second-class powers, and was consequently not competent to make the order passed by him.

2. Section 20 of Act I of 1871, as amended by Act I of 1891, authorizes a person, whose cattle have been seized under the Act, to make a complaint within ten days to the Magistrate of the District, or to any Magistrate authorized to receive and try charges without reference by the Magistrate of the District; and Section 22 provides that, if the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant reasonable compensation not exceeding Rs. 100 to be paid by the person who made the seizure or detained the cattle.

3. Now, the words "the Magistrate" in this section would seem to refer to the Magistrate previously mentioned in Section 20, i.e., either the Magistrate of the District or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District. It is not stated that Mr. Lloyd was either the District Magistrate or a Magistrate authorized to receive and try charges without reference by the Magistrate of the District, but it has been said that the complaint in this case was made in the first instance to the Magistrate of the District who referred it to Mr. Lloyd under the provisions of Section 192, Clause 1, of the Criminal Procedure Code. But we think that Section 192, Clause 1, can only authorize a District Magistrate to transfer a case of which he has taken cognizance, to a Magistrate subordinate to him who is competent to try or dispose of it. Under this section a District Magistrate can transfer for trial to a Subordinate Magistrate only cases which are within the powers of that Magistrate under Section 28 of the

Code, or under some special or local law. He cannot authorize a Magistrate to try a case which is beyond that Magistrate's powers, or which he is not authorized by some provision of some law to try. Thus, under Act I of 1871 the Magistrate can, under Section 192 of the Criminal Procedure Code, transfer to any Subordinate Magistrate any case coming under Chapter VI of the Act, as such cases are all apparently triable by any Magistrate (the words employed being a Magistrate, not the Magistrate); but we do not think he can, under that section, transfer to any Magistrate cases under Section 20 of the Act, which would appear to us to be triable only by the two classes of Magistrate specified in that section [vide *In the matter of Ketabdi Mundul* 2 C.L.R. 507). The order of Mr. Lloyd in this case would, therefore, seem to have been passed without jurisdiction.

4. We have considered whether the illegal order passed by the Magistrate in this case can be held to be cured by anything contained in the Code of Criminal Procedure. The only sections which have any bearing on the question are Sections 529 and 537, Clause (e). Section 529 declares that, if a Magistrate, not empowered by law in that behalf, takes cognizance of an offence under Section 191, Clause (a) or Clause (b), his proceedings shall not on this account be set aside. But the Magistrate has not done this in this case. The petitioners have not been charged with any "offence," as defined in Section 4, Clause (p) of the Criminal Procedure Code. The illegal seizure of cattle does not amount to an "offence" [see *Kottalanada v. Muthaya* I.L.R. 9 Mad. 374.]. Section 537 also cannot apply, for it deals with irregularities committed by "Courts of competent jurisdiction." In this case it was not an irregularity, but an illegality which the Magistrate committed, and the Magistrate who passed the order under Section 22 of Act I of 1871 was not a Court of competent jurisdiction. We are therefore constrained to make this rule absolute, which we accordingly do, setting aside the order of the Magistrate, directing the petitioners to pay 'Rs. 44-4 compensation.