

# CALCUTTA HIGH COURT

Satis Chandra Das Bose

Vs

Queen-Empress

(Rampini and Pratt , JJ.)

29.08.1899

## JUDGMENT

### **Rampini and Pratt, JJ.**

1. This is a rule calling on the District Magistrate to show cause why the order of the Sessions Judge, directing a retrial in this case, should not be set aside.
2. The facts of the case are that the petitioner was convicted by the Magistrate of an offence under Section 211 of the Penal Code and discharged of offences under Section 468 and 471. He appealed to the Sessions Judge, who set aside the conviction and sentence under Section 211 of the Penal Code, but directed that the case under Section 211 of the Penal Code should be retried.
3. It is now urged that the Sessions Judge had no power to pass such an order, and that the power to order a new trial conferred on him by Section 423(1)(b) can only be exercised when the conviction and sentence is set aside for want of jurisdiction in the Magistrate who has tried the case. In support of this contention, the remarks of Brodhurst, J., in *Queen-Empress v. Sukha*<sup>1</sup> have been cited. These remarks are, however, obiter dicta, and as regards the point decided in the case, viz., as to the power of an Appellate Court to order the committal of cases to the Court of Sessions, the decision has been dissented from in the cases of *Queen-Empress v. Maula Baksh*<sup>2</sup>, *Queen-Empress v. Abdul Rahaman*<sup>3</sup>, and *Misri Lal v. Bajpie*<sup>4</sup>
4. On a consideration of the terms of Section 423(1)(b)(1), we think there is nothing to limit the power of an Appellate Court to order a retrial. This seems to us to be expressly laid down in the case of *Queen-Empress v. Maula Baksh*<sup>5</sup>, where it is said: "We find nothing in Section 423 of Act X of 1882 to limit the power of the Sessions Judge to do any of the acts which he, as an Appellate Court, is empowered to do by Sub-clause 1 of Clause (6) of Section 420." Again, in *Queen-Empress v. Jabanulla*<sup>6</sup> it is said: "Section 423, Clause (b), has no such restriction imposed upon it. There is under that clause only one restriction to the power of the Appellate Court on an appeal from a conviction, and that is that it cannot enhance the sentence." We may add that the

ground taken in this rule by the learned Counsel for the appellant was not taken in the written petition to this Court. The question raised in the petition is as to the discretion of the Judge in remanding the case after the prosecution had full opportunity of proving their case.

5. We are accordingly of opinion that there is no legal defect in the order passed by the Sessions Judge in this case, and we discharge the rule.

#### Cases Referred.

- 1(1885) I.L.R., 8 All., 14
- 2(1893) I.L.E., 15 All., 205
- 3(1891) I.L.R., 16 Bom., 580
- 4(1895) I.L.R., 23, Cal., 350
- 5(1893) I.L.R., 15 All., 205
- 6(1896) I.L.R., 23 Cal., 975