

CALCUTTA HIGH COURT

Budhan Mahto

Vs

Issur Singh

(Mitra and Coxe, JJ.)

27.06.1907

JUDGMENT

Mitra and Coxe, JJ.

1. Sections 20 to 23 of Act I of 1871 (The Cattle Trespass Act) conferred, no doubt, a special jurisdiction on certain Magistrates, but Section 4, Clause (o) of the Code of Criminal Procedure (Act V of 1898) includes within the definition of the word offence "any act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act, 1871." Section 260 Clause (m) of the Code makes offences under Section 20 of the Cattle Trespass Act, 1871, triable summarily. Thus under the Code of 1898, cases under Section 20 of the Cattle Trespass Act come within the ordinary jurisdiction of the Magistracy and there is no reason now for holding that these cases should be dealt with in any way different from any other offence. *Shama v. Lechhu Shekh*¹ and *Raghu Singh v. Abdul Wahab*² appear to have been overruled by the Legislature.

2. Section 192, Sub-section (1) gives ample authority to a Sub-divisional Magistrate to transfer any case of which he has taken cognizance for trial to any Magistrate subordinate to him, provided the latter is otherwise competent to try the case. The last clause of Schedule II of the Code of 1898 makes any "offences against other laws" punishable with imprisonment for less than one year or with, fine only, triable by any Magistrate. There cannot, therefore, be any doubt as to the competency of S.K. Kaviraj, Sub-Deputy Magistrate of Bihar, to try the cases under reference.

3. Section 20 of the Cattle Trespass Act enables a person whose cattle have been seized in contravention of the Act to make a complaint to the Magistrate of the District or any other Magistrate authorized to receive and try such charges without reference by the Magistrate of the District. The section gave an exclusive jurisdiction to receive and try complaints, and no authority was given to transfer such cases for trial by a subordinate Magistrate. That authority has now been given by the Code of Criminal Procedure. It is dear to us, therefore, that though a

complaint under Section 20 of the Act must be entertained either by a District Magistrate or a Magistrate especially authorized, such Magistrate has now power to transfer the case, after taking cognizance of it, to any Subordinate Magistrate as contemplated by the Code.

4. We, therefore, direct that the orders of the Sub-Deputy Magistrate of Bihar be affirmed.

Cases Referred.

1(1895) I.L.R. 23 Cal. 300

2(1896) I.L.R. 23 Cal. 442