

CALCUTTA HIGH COURT

Fanindra Nath Chatterjee

Vs

Emperor

(Brett and Ryves , JJ.)

31.07.1908

JUDGMENT

Brett and Ryves, JJ.

1. This is a reference by the learned Sessions Judge of Durbhunga forwarding the case of Fanindra Nath Chatterjee and Chandoo Khan, who were convicted by a Deputy Magistrate under Section 186 of the Indian Penal Code and sentenced to pay a fine of Rs. 50 and Rs. 20 respectively, with a recommendation that the convictions and sentences should be set aside.

2. Two grounds have been suggested for the interference of this Court. First, that the Magistrate had no jurisdiction to try the case summarily, inasmuch as the complaint filed by the complainant discloses an offence punishable under Section 189 of the Indian Penal Code, which is not triable summarily, and secondly, that the warrant of distraint made over to the complainant authorised him to distrain the properties of the defaulters named therein found in certain premises described in the warrant. It has been found that the goods, which had been placed in the premises named in the warrant, had a short time previously been removed to another shop, which was fictitiously opened under the style of Minto Brothers, but which was really in the same ownership as the old shop. It is contended that the tax-daroga under this warrant had no right to seize the properties in the shop owned by the Minto Brothers.

3. On the first point the learned Sessions Judge relies on the case of *Bishu Shaik v. Saber Mollah*¹ as an authority for showing that the jurisdiction of a Magistrate to try a case summarily depends on the wording of the complaint. That case, however, does not lay down any such proposition. It was there held that "on the facts before the Magistrate the offences complained of were not triable summarily. The petition of complaint discloses the commission of a much more serious offence than the offence for which the Magistrate has held a summary trial. The examination of the complainant, which has not been properly recorded, does not show that the offence so complained of was not committed." It is clear in this case both from the complaint and from the sworn statement of the complainant that the facts stated do not amount to anything more than an

offence, which is covered by Section 186 of the Indian Penal Code. We, therefore, think that the Deputy Magistrate had jurisdiction to try the case summarily.

4. On the second point also we are unable to agree with the learned Sessions Judge. The form of the warrant authorised the tax-daroga "to distrain the moveable properties of the said defaulters, wherever they may be found within the Municipality, or any other moveable properties, which may be found within the holding specified in the margin to the amount of. the said sum." Once it is established by evidence that the goods, which were sought to be distrained, belonged in fact to the defaulters and were within the limits of the Municipality, the tax-daroga had complete jurisdiction to distrain them under this warrant for the amount specified therein.

5. For these reasons we decline to interfere, and direct the records to be sent down.

Cases Referred.

1(1902) I.L.R. 29 Calc. 409