

CALCUTTA HIGH COURT

Bisseswar

Vs

Emperor

(Mukherjee, J.)

26.06.1924

JUDGMENT

Mukherjee, J.

1. This rule raises an interesting point on the question of jurisdiction. The facts, as found so far as they are necessary for dealing with this point, are as follows : The petitioner and others were charged with conspiracy to commit theft and also offences punishable under Sections 411 and 414, I.P.C. They were also charged with specific offences punishable under the two last sections. Ultimately all the accused except the petitioner, were acquitted. The petitioner was also acquitted on the charge of conspiracy, but convicted of the offences punishable under Sections 411 and 414. The property which was found to be stolen property was abstracted from a consignment of goods on their way from the Howrah Station to the business premises of Messrs. Allen Brothers and Company. The important point in this connection is that during this transit the goods were always in the jurisdiction of either the Howrah Magistrate or the Chief Presidency Magistrate of Calcutta. The conspiracy between the accused was alleged to have been entered into at Kidderpore and Behala and other places. Kidderpore and Behala are within the jurisdiction of Alipore and the case was tried by the Alipore Police Magistrate and the appeal heard by the Sessions Judge of Alipore. The lower Courts relying on the decision of this Court to which one of us was a party in *Abdul Salim v. King-Emperor* A.I.R. 1922 Cal. 107, have held that the conspiracy charge although not established rendered the joint trial of all the accused on these charges legal. But the lower Courts have overlooked the important point of difference between the facts of this case and the present case. It is not now disputed that on the authority of this ruling, the accused in this case could have been jointly tried if all the offences with which they were charged had been alleged to have been committed within the territorial jurisdiction of the Magistrate who tried the case. But what is urged is that Section 239 cannot give jurisdiction to a Magistrate who has not jurisdiction under the provisions of any of the sections in Chapter XV of the Code of Criminal Procedure; in other words the point may be put in this way : If a conspiracy is entered into in District A and acts are committed in pursuance of that conspiracy in District B, the Magistrate of District A can try the conspiracy, but cannot try the accused in the same trial for acts committed outside his District. We think that the proposition is correct and that "unless" there is something to be found in Chapter XV which would enable the Magistrate in Alipore to try the accused for offences committed outside his jurisdiction, the mere fact that the offences : could have been tried jointly under Section 239, Cr.P.C., if committed within his jurisdiction, will

not give him jurisdiction 5; to try them. It is suggested that Section 182 "would give the Magistrate jurisdiction, but we are unable to hold that it can be applied to the facts of the present case. The only clause which it is suggested might make them triable is the clause which runs thus : Where the offence consists of several acts done in different local areas it may be inquired into or tried by a Court having jurisdiction over any of such local areas. But none of the offences charged consisted of several acts of which some were done in the local area over which the trying Magistrate had jurisdiction. The conspiracy was complete on the agreement and the acts done in other local areas, over which the trying Magistrate had no jurisdiction were not part of the conspiracy. Also the acts of receiving or retaining stolen property charged -against this petitioner were not acts done within the jurisdiction of the Alipore Magistrate. Clause (3) of Section 181 has also been referred to. But this is no assistance to the prosecution, since although now the offences of theft and the possession of stolen property may be enquired into by a Court having jurisdiction either where the offence of theft was committed or where the property was possessed, in the present case the allegation is that both the theft and the possession by the petitioner were outside the Alipore jurisdiction.

2. Taking this view we must make this Rule absolute and set aside the conviction and sentence passed on the petitioner on the ground that the trying Court had no jurisdiction. His bail bond will be discharged. This order will be no bar to the authorities taking further steps for the prosecution of the petitioner on charges under Sections 411 and 414, I.P.C., in a Court having jurisdiction if they think it necessary to do so.