

(1880) 05 AHC CK 0006

Allahabad High Court

Case No: None

Empress of India

APPELLANT

Vs

Ilahi Bakhsh

RESPONDENT

Date of Decision: May 31, 1880

Citation: (1880) ILR (All) 910

Hon'ble Judges: Oldfield, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

Oldfield, J.

The commitment is not vitiated because the Joint Magistrate did not commence afresh inquiry and take evidence de novo. The inquiry and the evidence at the trial are sufficient for the purposes of commitment. The proceedings held at the trial were not set aside by the Judge, whose order only set aside the conviction and sentence of the accused, and though those proceedings could not form the basis of a conviction by the Magistrate, there is- no reason why a commitment by the same Magistrate should not be based on them. In the analogous case when in the course of a trial the Magistrate finds that he must commit the accused to the Sessions Court, Section 221* of the Criminal Procedure Code directs that he "shall stop further proceedings under this Chapter (i.e., Chapter XVII, for trial of warrant cases) and shall commit the prisoner under the provisions hereinbefore contained," that is, under the provisions contained in Chapter XV. This direction does not mean that the Magistrate is to commence the inquiry and take the evidence de novo, since his procedure under Chapter XVII in the matter of examination of the complainant and witnesses has been conducted under Sections 190 to 194* of Chapter XV (see Section 214), but only that the further procedure necessary for commitment shall be taken as directed in Chapter XV. Moreover, trial is not vitiated by mere irregularity in the proceedings up to trial. The Judge should proceed with the trial.

*How the Magistrate is to proceed, when, after commencement of trial, he finds the case beyond his jurisdiction.

[Section 221:--In any trial before a Magistrate in which it may appear at any stage of the proceedings that from any cause the case is one which the Magistrate is not competent to try, or one which, in the opinion of such Magistrate, ought to be tried by the Court of Session or High Court, the Magistrate shall stop further proceedings under this chapter, and shall, when he either cannot or ought not to make the accused person over to an officer empowered u/s thirty-six, commit the prisoner under the provisions hereinbefore contained, If such Magistrate is not empowered to commit he shall proceed u/s forty-five.]

*Examination of complainant and witnesses for prosecution.

[Section 190:--When the accused person appears or is brought before the Magistrate, or, if his personal attendance is dispensed with, when the Magistrate thinks fit, the Magistrate shall take the evidence of the complainant and of such persons as are stated to have any knowledge of the facts which form the subject-matter of the accusation and the attendant circumstances.

Examination to be in presence of accused.

Section 191:--The complainant and the witnesses for the prosecution shall be examined in the presence of the accused person, or of his agent, when his personal attendance is dispensed with and he appears by agent.

Accused may cross-examine.

The accused person or his agent shall be permitted to examine and re-examine his own witnesses and to cross-examine the complainant and his witnesses.

Powers of Magistrate to summon and examine any person.

Section 192:--The Magistrate may, at any stage of the proceedings, summon and examine any person whose evidence he considers essential to the inquiry, and re-call and re-examine any person already examined.

Examination of accused.

Section 193:--The Magistrate may, from time to time, at any stage of the inquiry and without previously warning the accused person, examine him and put such questions to him as he considers necessary.

The accused person shall not render himself liable to punishment for refusal to answer such questions, or for giving false answers to them, but the Magistrate shall draw such inference as may to him seem just from such refusal.

Explanation:--The answer given by an accused person may be put in evidence against him, not only in the case under inquiry, but also in trials for any other

offences which his replies may tend to show he has committed.

Adjournment of inquiry and remand.

Section 194:--If, from the absence of a witness or from any other reasonable cause, it becomes necessary or advisable to defer the examination, or further examination, of witnesses, the Magistrate may, by a written order, from time to time, adjourn the inquiry, and remand the accused person for such time as is deemed reasonable, not exceeding fifteen days:

Instead of detaining the accused person in custody, during the period for which he is so remanded, the Magistrate may release him, upon his entering into a recognizance, with or without a surety or sureties, at the discretion of such Magistrate, conditioned for his appearance before such Magistrate at the time and place appointed for the continuance of such examination.

Explanation:--After commencing the inquiry, if sufficient evidence has been obtained to raise a suspicion that the person accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable ground for a remand.]