

(1898) 08 AHC CK 0006**Allahabad High Court****Case No:** None

Queen-Empress

APPELLANT

Vs

Abdul Razzak Khan and Another

RESPONDENT

Date of Decision: Aug. 25, 1898**Citation:** (1899) ILR (All) 109**Hon'ble Judges:** Banerji, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Banerji, J.

This is an application for the transfer to another Court of a criminal case now pending in the Court of the District Magistrate of Mainpuri. The application purports to be made under Sections 191 and 526 of the Code of Criminal Procedure. The case is one exclusively triable by a Court of Session, so that the Magistrate is only holding a preliminary inquiry into the matter. It appears that he has taken cognizance of the case under Sub-section 1, Clause (c) of Section 190, and it is urged that, that being so, the Magistrate is not competent to hold a preliminary inquiry in this case, having regard to the provisions of Section 191. I am unable to agree with this contention. In my opinion that section does not disqualify a Magistrate who has jurisdiction even to try the case from holding a preliminary inquiry. What that section provides is that if a Magistrate takes cognizance of an offence under Sub-section 1, Clause (c) of Section 190, and if, before any evidence is taken, the accused objects to being tried by such Magistrate, he may either transfer the case to another Magistrate or commit the case to the Court of Session. He is thus empowered to make a commitment in a case within his cognizance. He cannot make commitment without holding a preliminary inquiry, so that the section distinctly empowers him to hold a preliminary inquiry even in cases triable by himself. It necessarily follows that he is competent to hold a preliminary inquiry in cases exclusively triable by a Court of Session. In this case it has not been satisfactorily shown that there is a sufficient

reason u/s 526 of the Code of Criminal Procedure to transfer the preliminary inquiry to some other Court. It is desirable that the inquiry should be held by an officer holding the position of the District Magistrate, and there is no reason to assume that the District Magistrate of Mainpuri will not make his inquiry with an open mind. I dismiss the application and withdraw the order for stay of proceedings.