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(1924) 04 CAL CK 0004

Calcutta High Court

Case No: None

Mohini Mohan Roy — APPELLANT

Vs

Punam Chand Sethia — RESPONDENT

Date of Decision: April 15, 1924

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 18(4)

Citation: (1924) ILR (Cal) 820

Hon'ble Judges: Greaves, J; Duval, J

Bench: Division Bench

Judgement

Greaves, J.
On the 13th November last the Secretary of the Nawab of Murshidabad complained to the Additional Chief Presidency Magistrate of criminal breach of trust by one Punam Chand Sethia in respect of certain jewellery.

2. The Additional Chief Presidency Magistrate took cognizance of the offence, and after examining the complainant directed the police to enquire and report.

3. On the matter coming back to the Additional Chief Presidency Magistrate a judicial enquiry was asked for by the complainant, and the Additional Chief Presidency Magistrate thereupon transferred the case for disposal to the Fourth Presidency Magistrate. This Magistrate, after examining witnesses, ordered the issue of summons against Punam Chand Sethia on the 19th January 1924. On the 28th January Punam Chand applied to the Chief Presidency Magistrate asking, on the ground of jurisdiction, that the case should be recalled to his file, and that the trial should take place in his Court. The Chief Presidency Magistrate, having ascertained that the Fourth Presidency Magistrate had no objection, on the 30th January, withdrew the case from the file of the Fourth Presidency Magistrate and transferred it to his own file u/s 528 of the Code of Criminal Procedure. It is said that the Chief Presidency Magistrate had no power to make this order, and hence this Rule.

4. Section 18(4) of the Criminal Procedure Code empowers the Local Government to appoint an Additional Chief Presidency Magistrate, and provides that he shall have all or any of the powers of a Chief Presidency Magistrate under the Criminal Procedure Code as the Local Government may direct. Section 21(2) of the same Code empowers the Local Government to declare and define his subordination to the Chief Presidency Magistrate and the extent thereof.

5. By notification No. 6786J., dated the 23rd October 1923, the Local Government appointed Mr. Das Gupta as Additional Chief Presidency Magistrate, and authorised him to exercise the powers of a Chief Presidency Magistrate therein mentioned including the power u/s 528 to withdraw cases. He was not given the power of recalling cases.

6. By a notification No. 6787J., of the same date the Local Government, in exercise of the powers conferred by Section 21(2) of the Criminal Procedure Code, declared the Additional Chief Presidency Magistrate to be subordinate to the Chief Presidency Magistrate On behalf of the petitioner it is said that the Chief Presidency Magistrate had no jurisdiction to make the order as the case had been transferred by the Additional Chief Presidency Magistrate, and that inasmuch as he had not been given the power to recall a case to his own file, which he had once transferred, the order could only have been made by this Court. On behalf of the accused it is said that the Chief Presidency Magistrate has made an order withdrawing the case to his own file, and that he has power to make such order. We were referred to Section 17 of, the Code of Criminal Procedure which makes Magistrates subordinate to the District Magistrate, and to Section 21 of the same Code which by Sub-section (d) confers on the Chief Presidency Magistrate the same powers given to a District Magistrate by Section 17.

7. It is said that a District Magistrate could have made the order in question, and that, therefore, the Chief Presidency Magistrate can make the order, and we were referred to Raghunatha Pandaram v. Emperor (1). It was there held by Mr. Justice Bashyam Ayyangar that a District Magistrate had no power to cancel an order made by a Subdivisional Magistrate directing the transfer, u/s 528 of the Criminal Procedure Code, of a case from the file of one Subdivisional Magistrate to that of another Subdivisional Magistrate, and to direct the retransfer of the case to the file of the Subdivisional Magistrate from whom it was transferred as in the matter of transfer u/s 528 of the Criminal Procedure Code the District Magistrate and the Subdivisional Magistrate had coordinate authority over Magistrates subordinate to the Subdivisional Magistrate, and that his order cannot be appealed against to the District Magistrate. The learned Judge at p. 132, however, adds this, remark: "It may be that u/s 528 a case once transferred from one Magistrate to another may be withdrawn from the latter by the District Magistrate or even by the Subdivisional Magistrate, and that he may enquire into or try such case himself or refer it for enquiry or trial to some other competent Magistrate on a substantive application that it is in expedient that the Magistrate to whom it had been transferred should enquire into or try the case".

8. The case of Raghunatha Pandaram v. Emperor (1902) ILR 26 Mad. 130, 132 was dissented from by a Division Bench of the Madras High Court in Santhappa Sethuram v. Govindaswami Kandiyar (1916) ILR 40 Mad. 791 who followed and approved Thaman Chetti v. Alagiri Chetti I.L.R (1890) Mad. 399, where it was held that a Magistrate who is subordinate to a Subdivisional Magistrate is also subordinate to the District Magistrate within the meaning of Section 528, and that Section 17 of the Criminal Procedure Code, which declares such Magistrate to be subject only to the general control of the District Magistrate, cannot be so construed as to take away the special power conferred by Section 528.

9. In that case a Joint Magistrate transferred a complaint from a second class Magistrate to a Taluk Magistrate, and the District Magistrate transferred it back.

10. I think the principles of this case, with which I respectfully agree, apply to the case before us.

11. The Additional Chief Presidency Magistrate is, subordinate to the Chief Presidency Magistrate, and I think the Chief Presidency Magistrate had power, u/s 528 of the Criminal Procedure Code, to make the order which he did withdrawing the case to his file.

12. We have not considered the order on its merits, as the matter was not argued before us on those lines, and our decision relates only to the power of the Chief Presidency Magistrate to make the order which he has made. I would discharge the Rule.

Duval, J.

13. I concur