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**(1872) 08 CAL CK 0002**

**Calcutta High Court**

**Case No:** Miscellaneous Criminal Case, No. 158 of 1872

Jiat Sahu

Vs

APPELLANT

RESPONDENT

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**Date of Decision:** Aug. 17, 1872

**Final Decision:** Dismissed

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**Judgement**

Sir Richard Couch Kt., C.J.

In this case, as the offence was one triable by a Subordinate Magistrate of the first class, the Sessions Judge had not power to make the order which he made, and the case coming up to as under S. 404, we decide that the order was an erroneous one, and ought to be set aside; but it does not follow from this that the subsequent proceedings before the Magistrate ought to be set aside. If the order of the Sessions Judge was essential to the action of the Magistrate in again taking up the case, and trying the accused, of course, the order being set aside, the other proceedings would also be set aside. But the Magistrate, after he had discharged the accused under s. 250, had power, if circumstances appeared to him to require it, to take up the case again, and to re-try the accused. He appears to have had before him on the second occasion some fresh evidence upon which he drew up a charge, and having heard the defence of the accused, convicted him, which he had power to do. In whatever way the Magistrate was set in motion on the second occasion, there has been a proper conviction of the accused. The Magistrate might, and indeed ought to, have taken up the case again, and to have tried it as he has done. Therefore, I do not think that the circumstance that he was led to enter upon the second enquiry and second trial by the Sessions Judge having made his order, is a ground for setting aside his proceedings and the conviction. If that were now to be done, it would be the duty of the Magistrate, upon the facts with which he is now acquainted, to take up the case and investigate it. It would not be proper that a person, who appears upon the evidence taken to have committed an offence, should go entirely free and unpunished, because the Sessions Judge has made this order erroneously.

2. A decision of Kemp and Glover, JJ., dated the 28th of March, 1872, in the case of In the matter of the petition of H.P. Caspersz Ante, p. 337 has been read to us, but that decision is not in conflict with what we now decide. It set aside the order of the Sessions Judge; but nothing was said as to what the consequences of setting it aside would be, that question really not arising in the case.