

(1880) 04 CAL CK 0008

Calcutta High Court

Case No: None

The Empress

APPELLANT

Vs

Anuntram Singh and
Others

RESPONDENT

Date of Decision: April 26, 1880

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 122, 193, 346

Citation: (1880) ILR (Cal) 954

Hon'ble Judges: Richard Garth, C.J; Pontifex, J; Morris, J; Mitter, J; Jackson, J

Bench: Full Bench

Judgement

1. In the particular case out of which this reference arises, the prisoners, Tophia and Dariah, were arrested by the police and forwarded under custody to the Magistrate having jurisdiction, and made each a confession to him before the police investigation was concluded, (or at least before the report of the police investigation was submitted). The Magistrate who recorded their confessions was the Magistrate who conducted the preliminary enquiry, and committed them for trial to the Court of Session. And not only had this officer jurisdiction to make the enquiry preliminary to commitment, but he had also the power to determine what Magistrate should conduct the enquiry. The Sessions Judge finds that, "when the prisoners were sent up before him on the 17th, he had resolved to take up the preliminary enquiry himself," as indeed his duty required; but that the formal order to that effect was not made till a few days later. The prisoners, as the Judge also points out, ceased to be in the hands of the police from the time that they were brought before the Magistrate. Their confessions were recorded, and they were ordered to be placed in hajut, and thereafter the preliminary enquiry, as it affected them, was carried on, and the police investigation was at an end.

2. Under these circumstances, we are of opinion that the confessions of these two prisoners must be regarded as having been made in the course of a preliminary

enquiry, and not u/s 122, Code of Criminal Procedure; and that, consequently, the provisions of the last paragraph of Section 346 apply.

3. Section 122 contemplates and provides for cases in which confessions are recorded by a Magistrate other than the Magistrate by whom the case is enquired into or tried. When, therefore, as here, the Magistrate who recorded their confessions was the Magistrate who conducted the enquiry preliminary to committal, and had jurisdiction so to do, such confessions cannot be treated as taken u/s 122; nor can the circumstance of the Magistrate having noted at the head of the confessions that they were recorded u/s 122 affect the matter, The case of *The Empress v. Mannoo Tamoolee* (I.L.R. 4 Cal. 696) does not conflict with this view; for, though the Magistrate who recorded the confession in that case subsequently conducted the preliminary enquiry and committed the prisoner for trial, yet, at the time of recording his confession, he was outside the limits of his jurisdiction, and had no power to take up the preliminary enquiry.

4. It seems to us, therefore, that the first question of reference, viz., whether a confession recorded by a Magistrate having jurisdiction is to be treated as an examination u/s 193, notwithstanding that the prisoner or prisoners may have been brought before the Magistrate before the conclusion of the police investigation, should be answered in the affirmative.

5. Holding this view, the second question of reference does not arise, and need not be dealt with.