

**(1912) 08 BOM CK 0023****Bombay High Court****Case No:** Criminal Reference No. 61 of 1912

Emperor APPELLANT

Vs

Abdul Rahiman Momin RESPONDENT

**Date of Decision:** Aug. 26, 1912**Citation:** (1912) 14 BOMLR 891 : 17 Ind. Cas. 530**Hon'ble Judges:** Rao, J; Batchelor, J**Bench:** Division Bench**Judgement**

Batchelor, J.

We think that the procedure by which this matter has ultimately found its way to this Court is open to objection. The accused was placed before the Second Class Magistrate on an accusation that he, being a subject of the Aundh State, had within the limits of that State dishonestly received certain property which had been stolen in British India. Those circumstances, no doubt, raise a point of law as to whether the accused would be amenable to the jurisdiction of the British Court; and that is a question which could only be decided by a Tribunal placed in full possession of all the facts bearing upon that question. The Second Class Magistrate, however, seeing this legal question looming before him, instead of completing his enquiry, getting upon the record all the evidence that was available and then deciding the point of law, right or wrong, for himself, proceeded to address an official communication to the District Magistrate seeking his advice in the matter. The District Magistrate replied, stating his opinion on the question of jurisdiction, but in our opinion the best reply would have been to direct the Second Class Magistrate to complete his enquiry, and as a Magistrate pass such order as seemed to him to be legal and proper. That is the direction which we must now make. The Second Class Magistrate must finish the enquiry, completing his record by the reception of all evidence of relevant facts, including the facts which bear upon this question of the accused's amenability to a British Court's jurisdiction. With this record thus complete the Magistrate must consider for himself the question of law which arises and must decide it for himself. If he decides it rightly so much the better ; if he decides it

wrongly there are Tribunals constituted for the purpose of correcting his mistake.