

(1889) 05 CAL CK 0005
In the Calcutta High Court

Bichitranund Dass and Others

APPELLANT

Vs

Bhugbut Perai and Dukhai Jana

RESPONDENT

Date of Decision : 20-05-1889

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 182, 531

Citation : (1889) ILR (Cal) 668

Hon'ble Judges : Trevelyan, J;Beverley, J

Bench : Division Bench

Judgement

Trevelyan and Beverley, JJ.—In this case we think it clear that the conviction cannot stand. The alleged offence was unquestionably and admittedly, if it was committed at all, committed within Kheonjur. Now there seems to be no question that Kheonjur and Mohurbunj are tributary mehals standing exactly upon the same footing with regard to their relations with the British Government and their independence. This is apparent from the treaty engagements executed by the Rajahs of these respective territories which are set out at pages 184 to 187 of the 1st volume of Aitchison's Treaties. A comparison of these two engagements shows that they are practically identical in terms, and the learned Counsel who appears for the Crown has not disputed that proposition. Now this place Kheonjur being in this respect the same as Mohurbunj, we have to consider the effect of the Full Bench case *The Empress v. Keshub Mohajan* ILR Cal. 985, and the cases that gave rise to that reference to the Full Bench. There is no doubt of this, that the result of the Full Bench case and the other cases is this, that whether Mohurbunj was a foreign territory or not, the Criminal Procedure Code and the Penal Code had no application to it. It therefore follows by parity of reasoning that in the case of Kheonjur these Codes have no application. This proposition also was not disputed by Mr. Kilby who appears for the Crown. Mr. Kilby very properly pointed out his position, and told us that he found it was impossible to support the judgment in the face of these considerations. That being so, and these Codes not applying, it follows that the Magistrate before whom this case first came for decision and the Sessions Judge to whom an

appeal was made from the decision of the Magistrate, had no jurisdiction to try the case. It follows also that the Sessions Judge was wrong in his judgment where he considered that Section 182 of the Criminal Procedure Code applied. That section clearly does not apply for two reasons. In the first place the words "local area" in that section must mean a local area over which this particular Code applies, and it would not refer to a local area in a foreign country, or in a portion of the British Empire to which this Code has no application. The whole purport of the section makes that clear. Then again that section in reality intends to provide for the difficulty which would arise where there is a conflict between different areas, in order to prevent an accused person getting off entirely, because there may be some doubt as to what particular Magistrate has jurisdiction to try the case. Each portion of the section refers to this conflict. The Sessions Judge finds as a fact that this particular offence was committed in this local area of Kheonjur, and it is impossible to find from his judgment with what other local area that local area in Kheonjur conflicts. For this reason also Section 182 has no application to the present case. The other section to which the Sessions Judge refers, viz., Section 531, is equally inapplicable. That section, of course, only refers to districts, divisions, sub-divisions and local areas governed by the Code of Criminal Procedure, and for similar reasons it does not apply. In our opinion the place where the offence is said to have been committed was not within the jurisdiction of the Magistrate or of the Sessions Judge.

2. For these reasons we think it is quite clear that the judgment is wrong. We set aside the convictions and direct that the fines, if realised, be refunded.