
(1916) 12 CAL CK 0003
In the Calcutta High Court

Charu Chandra Majumdar

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 04-12-1916

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 185

Citation : 37 Ind. Cas. 145

Hon'ble Judges : Lancelot Sanderson, C.J.; Newbould, J.; John Woodroffe, J.; Chaudhuri, J.; Asutosh Mookerjee, J

Bench : Full Bench

Judgement

Lancelot Sanderson, C.J.—In this case a Rule was issued by this Court on the 14th August 1916 calling upon the District Magistrate of Karwar (in the Presidency of Bombay, District North Canara) to show cause why the proceedings should not be transferred to the Court of the Chief Presidency Magistrate in Calcutta and the alleged offence enquired into and tried in Calcutta, or why such other order should not be passed in the matter as to this Court may seem fit and proper on the grounds mentioned in the petition:

2. With a direction that the Rule should be sent to the Registrar of the High Court in Bombay for favour of its transmission by him to the District Magistrate.

3. The Rule was served with the assistance of the Registrar of the Bombay High Court upon the local Magistrate and the Rule came up for argument before Chaudhuri and Newbould, JJ., during the vacation.

4. The questions at issue were (1) whether the learned Judges had jurisdiction u/s 185 of the Code of Criminal Procedure to make the Rule absolute, (2) if they had such jurisdiction, whether it should be exercised and (3) if it were so exercised, in what form the order should be made.

5. The learned Judges were agreed on the basic question of jurisdiction but were unable to agree as to the manner in which it should be exercised. They expressed the opinion that as the case involved an important question of ,

jurisdiction, and as the Court in two reported f decisions, viz., Hiran Kumar Chowdhury v. Mangal Sen (2) and Rajani Benod Chakravarti v. All India Banking and Insurance Company (1) had apparently taken opposite views, they considered it a fit case for reference to a Full Bench, and expressed the view that as the matter was being referred to a Full Bench, that Bench should also consider the second question, viz., the question of convenience, upon which they were not agreed; a course in which the learned Counsel engaged in the case before the Full Bench have concurred.

6. The questions for the determination of the Full Bench were stated as follows.

1. Is the decision in Rajani Binod Chakravarty v. All India Banking and Insurance Company (1) correct?

2. Is the form of the order in Hiran Kumar Chowdhury v. Mangal Sen 2) correct? If not, what is the correct form of the order.

7. The further point for consideration is.

3. Has the accused made a sufficient case for an order u/s 185, Criminal Procedure Code, on the ground of convenience?"

8. The applicant for the Rule is the managing agent and a Director of the Bharat Luxmi Provident Company, Ltd., carrying on business at its registered Head Office at 81, Clive Street, Calcutta, and he resides within the local limits of the Appellate Criminal Jurisdiction of this High Court.

9. Proceedings against him and one of the Company's agents were instituted at a place called Karwar in the Canara District of the Presidency of Bombay.

10. The charges made against the applicant for the Rule are vague and indefinite.

11. Two charge-sheets have been produced before us written in the Kanarese language, and after very considerable trouble, which would have been avoided if proper steps had been taken by those instructing learned Counsel for the prosecution, the officials of the Court have succeeded in obtaining a translation.

12. These show the charge to be as follows.

(1) The charge is that the Company-effected Life Assurance and granted marriage policies stipulating in both cases to pay more than the money invested by the assured, but has failed to do so. Accused stand charged under Sections 420 and 409 of the Indian Penal Code.

(2) Charged with swindling persons effecting insurances without proper return according to the regulations of the Company.

13. Such statements do not give much, if any, indication of what the real nature of the criminal charges is against the managing agent, and indeed taken by themselves the statements might almost be said to amount to allegations of a civil liability against the Company rather than a criminal charge against the

applicant personally. The District Superintendent of Police of Kanara, however, has forwarded a statement, entitled "Points to refute the statement made by Charu Chandra Majumdar in his application to the Calcutta High Court".

14. This statement is almost as vague as the statements in the charge-sheet, but it purports to allege that the Company on false representations and assurances led the public to become subscribers of the Company and to obtain policies, and failed to carry out the promises with the ultimate result that the policies lapsed and the managing agent managed the accounts in such a way, by withholding proper receipts, that he appropriated the money subscribed by the policy-holders and "allowed the policies to lapse directly or indirectly" and thereby managed to profit the Company and himself.

15. With such statements only before us, it is difficult to understand what is the real nature of the charge made against the managing agent; the conclusion I come to is, that the prosecution intend to allege some system of fraud against the Company to which the managing agent was a party and that they do not know what it will be until they have had an opportunity of investigating the books of the Company.

16. I am confirmed in this opinion by the fact that we were informed that the prosecution have demanded the production of the Company's books for the years 1911 to 1915, and that as regards the managing agent, the Magistrate has expressed the opinion "that the case against him seems to depend mostly on documentary evidence."

(1) as regards the first point, viz., jurisdiction, it is not disputed by the learned Counsel for the Crown that if it could be shown on the facts that the Court at Karwar had no jurisdiction to try the case against the managing agent, this Court would have jurisdiction u/s 185, Code of Criminal Procedure, to decide by which Court the alleged offence should be enquired into or tried, and it has also been conceded by him that if on the facts there is a doubt where the offence was committed this Court could exercise the powers given by Section 185. He has argued, however, that on the facts the alleged offence u/s 420, Indian Penal Code, must have been committed (if committed at all) partly within the jurisdiction of the Karwar Court, and that as regards the alleged offence u/s 409, Indian Penal Code, there may be a doubt whether the Karwar Court has jurisdiction.

17. He argued, therefore, that as regards the alleged offence u/s 420, Indian Penal Code, at all events this Court could not exercise powers contained in Section 185.

18. In view of the conclusion at which I have arrived upon the question of "convenience," and to which I will refer hereinafter, I do not think it necessary to decide the point whether such a state of affairs as set out above would be sufficient to give the Court jurisdiction u/s 85, and in my judgment it would not be desirable in this case to express any opinion thereon, unless it was necessary

so to do, having regard to the vagueness and indefiniteness of the charges: the state of uncertainty in which the Court is left both as to the charges and the facts upon which they are alleged to be based make it very difficult to arrive at any definite conclusion without further investigation.

19. The main point, however, on which the question of jurisdiction was argued, was that of "convenience".

20. It was argued on behalf of the applicant that this Court could exercise the powers given by Section 185 merely on the ground of "convenience" and "expediency." This was strenuously denied in argument by the learned Counsel for the prosecution. This question depends upon the proper construction of Section 185.

21. That Section says.

(1) Whenever any doubt arises as to the Court by which any offence should under the preceding provisions of this chapter be enquired into or tried, the High Court within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be enquired into or "tried."

22. The words in the Section "should under the preceding provisions of this chapter" necessitate a reference to Sections 177 to 184, and a consideration of those Sections leads me to the conclusion that in some cases, mentioned in those Sections, e.g., where jurisdiction is given to more Courts than one for the same offence, if a doubt arises as to the Court by which such offence should be tried it must involve a doubt as to the suitability of one Court as compared with another from the point of view of "convenience and expediency."

23. I, therefore, agree with the construction placed upon the Section by Chaudhuri, J., and Newbould, J.

24. This is in accordance with the judgment of Chitty, J., and Richardson, J., in *Hiran Kumar Chowdhury v. Mangal Sen* (2) and *Emperor v. Chaichal Singh* (3) and consequently, in my judgment, the decision in *Rajani Benod Chakravarti v. All India Banking and Insurance Company* (1) was not correct.

(2) I take next the question whether from the point of view of general convenience the case against the managing agent should be tried in Calcutta or at Karwar. This is a question by no means free from difficulty, as is evidenced by the fact that different views have been taken by Chaudhuri, J., and Newbould, J. I have come to the conclusion, however, that the balance of convenience is in favour of the case being tried in Calcutta, and, therefore, with great deference to the opinion expressed by Newbould, J., I really need say no more than that I agree with the conclusion arrived at by Chaudhuri, J.

25. The learned Judge has set out the main grounds for his conclusion in his judgment, and I need not repeat them.

26. I will add this, that although it is alleged that a considerable number of witnesses who are policy-holders will be necessary to prove a "system" on the part of the Company, the evidence of such witnesses must necessarily be of a formal nature and perhaps undisputed, whereas the real crux of the case will depend upon a close investigation of the books of the Company, and upon an enquiry as to how the money subscribed by the policy-holders has been applied. This will necessitate, as we have been told and as I assume, the evidence of expert accountants on the one side and the other and this is the part of the case which, in my judgment, will be likely to occupy the greater portion of the time devoted to the enquiry. The prosecution allege that the books for five years will be necessary and the Magistrate, as already mentioned, states that the case will depend mostly on documentary evidence.

27. If such books and the managing agent are to be taken to Karwar and to remain there for weeks and perhaps months, it is possible that this may create a great hardship on the Company, and it is alleged that it will amount virtually to a stoppage of the business of the Company.

28. I think that this jurisdiction in cases of this kind should be exercised sparingly, but with respect to this matter, in my judgment, it is impossible to leave out of consideration the fact that the prosecution have failed to define the real nature of the criminal charges alleged against the managing agent, although it must have been obvious that on such an application as this it was essential that the Court should have as definite information thereon as is possible---a fact which I think may be taken to render this case an exceptional one.

(3) As regards the form of the order, in my judgment it should follow the words of Section 185 and it should be limited to a declaration that the Court's decision is that the case against Charu Chandra Majumdar should be enquired into or tried by the Court of the Chief Presidency Magistrate in Calcutta. This will leave it open to the prosecution or the applicant to take such steps as they may be advised.

29. I desire to take this opportunity of expressing our obligation to the Chief Justice and Judges of the Bombay High Court for their courteous assistance to us in this matter.

John Woodroffe, J.

30. The referring judgment holds that this Court has extra-territorial jurisdiction u/s 185 and this is not disputed by the Crown and, therefore, I need not consider the Section upon this point.

31. The question then before us is, whether the "doubt" referred to in the Section is a doubt as to competency or jurisdiction, or whether it is a "doubt" whether one or another Court should enquire into or try a case on the ground that an accused alleges that it will be inconvenient for him if one of these Courts does so. There is no question but that this matter of convenience is dealt with by

the Criminal Procedure Code, as regards Courts within the jurisdiction u/s 526, and without the jurisdiction u/s 527. We are then asked to say that though the Code provides that the Government may transfer a case which is in a Court outside the jurisdiction on the ground of convenience, Section 185 gives a similar power to the High Court, with this difference that whereas the Government can make an order of transfer this Court cannot, but can only pass a "decision" in the nature of a declaratory order to which comity of Courts will give effect. It is not usual for the Legislature to duplicate procedure in this way and one result of holding that it has done so, will make it possible for this Court u/s 185 and the Government u/s 527 to pass conflicting orders. Further, as Mr. Camell has shown, the course of legislation is against the view that Section 185 is intended to cover questions of convenience of this kind. For under the Code of 1882 the present Section 185 and Sections 526, 527 were placed within the same chapter, whereas now the two latter Sections have been removed to another chapter, and the words "under the preceding provisions of this chapter" have been inserted in Section 185. Thus to take an instance appropriate to the present case, u/s 181 (2) criminal breach of trust may be tried by a Court within the local limits of whose jurisdiction any part of the property was received or retained or the offence was committed. There might be a doubt on the facts whether what was done constituted a receiving or retention within a particular jurisdiction or whether the offence was committed in another local area. Under these circumstances the assistance of the Court might be invoked to determine the matter u/s 185. But if there is no such doubt and it is clear that property was retained within one jurisdiction, and the offence committed in another, the Court has no power to interfere u/s 185 on the ground that it is more convenient to the accused that he should be tried in one jurisdiction and not in another. To hold otherwise would be to cut down the clear provisions of Section 181 (2) and to give the Courts of one Province power to interfere with action taken in the Courts of another Province, upon grounds which may occur in any and every case. This I think was never intended, nor that the High Court should determine that one Court is more suitable than another if there is no doubt that there is jurisdiction in either. Section 185 is not designed to cut down admitted jurisdiction, but to determine cases where the facts said to constitute jurisdiction are doubtful. There must also be facts on which a doubt can arise. These provisions deal with jurisdiction and not with convenience. We may speak of a "doubt" whether one Court or another has jurisdiction, but it is straining language to say that there is a "doubt" (not a "question") whether it is convenient to an accused to be tried in one Court or another. The word "should" is possibly ambiguous and may apply to the suitability of a particular Court as well as its competency. For the reasons, however, above stated, I think that Section 185 does not deal with transfer of cases on the ground of mere convenience raised by the accused but with doubt as to competency. As the question of convenience can be raised in a very large number of cases, a contrary construction may lead to an obstruction of administration. Where proceedings are started in Bengal applications can be made in Bombay, Madras, Allahabad and elsewhere and vice versa. There is

nothing to prevent an accused leaving one jurisdiction and going to another to make such an application. If it is not a bona fide application it may be rejected, but meanwhile proceedings are delayed and the prosecution obstructed. I am of opinion we cannot under this Section consider the question of convenience merely, but if we could, I agree with Mr. Justice Newbould that this is not a case in which we should make an order having the effect of removing the proceedings from Bombay. In a matter of convenience we must consider not only the interests of the accused but also of the prosecution and its witnesses. The return of the Magistrate states the grounds which, I think, support the view which Mr. Justice Newbould has taken. The complainants are poor illiterate persons and to ask them and their witnesses to travel to Calcutta will, I have little doubt, result, as Mr. Camell says, in the prosecution falling through: though (without prejudging the case against the accused) there is material on the record to show that it is possible that this is one of the too numerous cases in which persons allege that they have been defrauded by the indigenous provident societies and insurance offices which have sprung up in India in recent years. If we accede to the general contentions urged in this case, the result is likely to be as follows:--- Such societies generally have their head office in the larger towns and sometimes, as here, in the capital of another Province than that in which the insurances are effected. In such cases to call upon poor illiterate persons to go to the expense and trouble of travelling far from the place where the offence was committed may amount to a denial of justice. As is well known, the Courts are as a rule averse to issuing commissions in criminal cases, and the main point urged by the accused that his books are wanted is met in part by the fact that they will be required wherever the suit is tried, and if it be said that the inconvenience will be less here than in Bombay, the answer is that all that the prosecution require are the entries relating to the Khanapur Agency and of these only copies are required, on which being given the books may be returned.

32. I come now to the next contention that apart from the question of convenience a "doubt" arises as to the competency of the Bombay High Court. It is conceded that no such doubt exists as regards the offence u/s 420, which the Bombay Courts are empowered to try. It is said, however, and this is not denied, that there may be a doubt whether the Bombay Court has jurisdiction to try the offence charged u/s 409. It is noteworthy that this point is not mentioned in the referring judgment. If we examine this point closely we find that what is meant to be said is not that there are allegations of fact on which a doubt arises which Court should try the offence, but that the facts alleged are insufficient to show what are the acts which are said to constitute the offence and where they were committed. If this be so, the obvious course is not to ask us for an impossible decision whether the case should be tried here or in Bombay, but to take the necessary proceedings open to the accused in the Bombay Court. The nature of these proceedings would, according to Mr. Norton, be to quash the charge as regards Section 409. His client does not propose to go to the Court which alone can do this, but he wishes to put Section 185 to an indirect use and get the

proceedings over here and then make an application which, if well founded, should be made now in the Bombay Court.

33. This is not such a "doubt" as is referred to in the Section. How on these facts could we decide that in case u/s 499, the facts of which we are ignorant of--- should be tried in Calcutta or anywhere else? Mr. Norton's real contention is that the case should not be tried anywhere upon the present charge at all.

34. If, however, we interpret the prosecution statements as definite enough to show that an offence may have been committed either in Bombay or at Calcutta, then we must first consider whether we can pass a decision which shall affect the proceedings u/s 420, even though it is conceded no "doubt" arises with reference thereto. There is nothing in the Section which authorises us to say that there is no doubt as to one offence but doubt as to another, and as the offences arise on the same facts, give a decision which shall affect both charges. Nor, assuming we have such a power, is there any necessity to do so. The Bombay Court has clearly jurisdiction as regards Section 420 of which it should not be deprived.

35. It is not clear when or on what materials an application u/s 185 should be made, but it is to be noted that the want of definiteness is in part at least due to the fact that specific charges have not been formulated after evidence taken. This evidence may disclose either that the Court has jurisdiction to try an offence u/s 409 or a charge of abetment of such offence. If so, there is no reason why the Court selected by the prosecution within whose jurisdiction the complainants are, should not try the offence. If the evidence discloses that no offence was committed within the jurisdiction, the accused will be acquitted on that ground. I am satisfied that there is a great probability that as the result of holding otherwise the charges made will not be tried anywhere or at all. And this result and not a trial in any particular one of two Courts (as to which there may be a "doubt") is doubtless the object of the present application which seeks to put Section 185 to an use for which, in my opinion, it was not intended.

36. I would, accordingly, answer the questions referred to us as follows.

(1) Yes.

(2) The matter does not arise for decision on my judgment.

(3) Mere convenience either of the accused or prosecution is not a ground for action u/s 183, and if it were, the proceedings in the present case should under the circumstances be left where they now are.

Asutosh Mookerjee, J.

37. Two important questions of law arise on this reference, namely, first, is Section 185, Criminal Procedure Code, restricted to cases instituted in a Court subordinate to the High Court to which the application is made and, secondly, is Section 185 restricted to cases where a doubt arises as to the jurisdiction of the Trial Court by reason of some uncertainty regarding the facts or the law

applicable to the case, if both these questions are answered in the negative, the point will require consideration, whether the circumstances of the case before us justify an order in favour of the accused under the first Sub-section of Section 185, which is in these terms.

Whenever any doubt arises as to the Court by which any offence should, under the preceding provisions of this chapter, be enquired into or tried, the High Court within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be enquired into or tried.

38. The first of the two questions formulated above relates to the jurisdiction of the High Court to, make an order under this Section in respect of an enquiry instituted or trial commenced in a Court situated beyond its territorial limits. Upon this matter, there is no divergence of judicial opinion. That the answer should be in the affirmative was assumed in the case of *Hiran Kumar Chowdhury v. Mangal Sen* (2) and *Rajani Benod Chakravarti v. All India Banking and Insurance Company* (1). The question, however, was expressly raised and decided in the affirmative in the case of *Emperor v. Chaichal Singh* (3). In the case before us, the point was not taken before the Division Court, and Counsel for the Crown has not contended before us that if the case was otherwise within the scope of Section 185, that provision was inapplicable by reason of the circumstance that the proceedings are pending in a Court subordinate to another High Court. This admission by Counsel for the Crown would not, however, justify the assumption of jurisdiction by this Court, if Section 185, upon its true construction, has no application to proceedings in what may be called extra-territorial Courts; for it is an elementary Rule that jurisdiction cannot be conferred by consent of parties, where there is an entire absence of jurisdiction. We must further bear in mind that on this reference not merely the question whereupon there is divergence of judicial opinion, but the entire case is, under the Rules of Court, before the Full Bench. It is for these reasons incumbent upon us to satisfy ourselves as to the applicability of Section 185 to a proceeding instituted in a Court subordinate to another High Court before we consider the ease on the merits.

39. Upon a careful examination of the provisions of Section 185, I have arrived at the conclusion that the Section is not restricted to proceedings instituted in a Court subordinate to the High Court where the application is made. The Section invests that High Court with authority to determine the question, within the local limits of whose appellate criminal jurisdiction the offender actually is. It is plain that such High Court may not be, in a particular case, the High Court superior to either of the Courts competent to try the offence "under the preceding provisions of the chapter" mentioned. It is not necessary for my present purpose to determine whether the Legislature contemplated the commission of an offence under circumstances which make it triable in either of two Courts subordinate to two different High Courts, followed by an application u/s 185 to a third High Court within the territorial limits of the appellate criminal jurisdiction whereof the

offender ordinarily resides or is actually present at the time of the application. This, at any rate, is plain from the terms of the Section that if the offence is triable by any one of two or more Courts subordinate to different High Courts, the High Court within the local limits of whose appellate criminal jurisdiction the offender actually is, is competent to entertain the application. I do not feel pressed by the fact that Section 527, Criminal Procedure Code, authorises the Governor-General-in-Council to direct the transfer of any criminal case from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court. The scopes of Sections 185 and 527 are obviously different. Under the former Section, the High Court, within the limits of whose appellate criminal jurisdiction the offender actually is, merely decides by which Court the offence shall be enquired into or tried. The order made is not in terms an order for transfer, though no doubt the resultant effect may be the same, as it is extremely improbable that one High Court should disregard such a determination by another High Court. Section 527, on the other hand, invests the Governor-General-in-Council with power to make an actual order for transfer. In my opinion, Section 185 is comprehensive enough to be applicable to cases instituted in Courts beyond the local limits of the appellate criminal jurisdiction of the High Court where the offender actually is. The first question formulated above must consequently be answered in the negative.

40. The second of the two questions formulated at the outset relates to the true scope of Section 185, where it is applicable. Upon this matter, there is a divergence of judicial opinion in this Court, which has rendered necessary this reference to a Full Bench. In *Hiran Kumar v. Mangal Sen* (2) Chitty and Richardson, JJ., adopted the view that where an offence is triable in either of the two Courts, the High Court may make an order u/s 185 on the ground that the offence may be enquired into or tried more conveniently in one of those Courts than in the other. On the other hand, in *Rajani Binod Chakravarti v. All India Banking and Insurance Co.* (1) Imam and Chapman, JJ., put a restricted interpretation on the Section and treated it as limited in application only to cases where a doubt arises as to the jurisdiction of the Court by which the offence may be enquired into or tried. Chaudhuri and Newbould, JJ., have expressed themselves in favour of the more liberal construction of the Section. Upon a minute scrutiny of the relevant provisions of Chapter XV of the Code of Criminal Procedure, I feel convinced that a narrow construction should not be placed upon Section 185. This chapter comprises Sections 177---199, and is divided into two parts, the first whereof is headed: "Place of enquiry or trial," and includes Sections 177---189. Section 177 formulates the general principle that the ordinary place of enquiry and trial is the Court within the local limits of whose jurisdiction the offence is committed. Section 178 authorises the Local Government to order cases to be tried in different Sessions Divisions. Sections 179---184 embody provisions in the nature of exceptions or alternatives to Section 177. Section 179 recognises the doctrine that the accused is triable either in the District where the

criminal act is done or in the District where the consequence there of ensues. Section 180 provides that where the act is an offence by reason of relation to another offence, the trial may take place in either of the Courts competent to try the accused for either of the offences. Section 181 deals with four classes of cases. The first class refers to thugs and dacoits who are liable to be tried by a Court within the local limits of whose jurisdiction the person charged is. The second class includes criminal misappropriation and criminal breach of trust; in the case of these offences, the offender can be tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person. The third class refers to stealing, and here the offender is made liable to be tried by a Court within the local limits of whose jurisdiction the property was stolen or was possessed by the thief or by a receiver of stolen property. The fourth class comprises kidnapping and abduction; here the offence may be enquired into or tried by the Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained. Section 182 again refers to four classes of cases; namely, first, where there is an uncertainty in respect of the local area where the offence is committed; secondly, where the offence has been committed partly in one local area and partly in another; thirdly, where the offence is continuously committed in more than one local area; and fourthly, where the offence committed consists of acts done in different local areas; in each of these cases, the offence is made triable by a Court having jurisdiction over any of such local areas. Section 183 treats of an offence committed by a person in the course of performing a journey or voyage and makes the offender liable to be tried by a Court through the local limits of whose jurisdiction the offender or the person against whom or the thing in respect of which the offence has been committed passed in the course of the journey or voyage. Section 184 makes an offence against Railways, Telegraphs, Post Office and the Arms Act triable in a presidency town where such offence may or may not, have been committed, provided the offender and all the witnesses necessary for his prosecution are to be found within such town. The group of Sections, just analysed, is followed by Section 185 with which we are primarily concerned. That Section relates to cases where any doubt arises as to the Court by which any offence should, "under the preceding provisions of this chapter", be enquired into or tried. Full effect must plainly be given to the expressions "should" and "under the preceding provisions of this chapter". The contention on behalf of the Crown is that the "doubt" mentioned is a doubt as to the jurisdiction of the Court by which the offence may be enquired into or tried; but this narrow construction would clearly make Section 185 inapplicable to all cases comprised in the previous Sections except the particular case contemplated in the first clause of Section 182, which speaks of uncertainty with regard to the local area where an offence has been committed. In the events mentioned in the other Sections as also the remaining clauses of Section 182, no Question can arise as to the competency of the particular Court to hold an enquiry or trial for the alleged offence. In very many instances, for example, in

the classes of offences comprised in Section 181 or Section 184, the only possible question which can arise on an application u/s 185 is that of expediency or convenience; under the rules laid down, the enquiry or trial may be held in one of two or several Courts; the problem for solution is, where should the trial actually take place. Indeed, if all cases, where an order is sought u/s 185 on the ground of convenience, were excluded from its scope, the reference therein to "the preceding provisions of this chapter" would become, in a very largo measure, entirely nugatory. I am confirmed in my conclusion by the fact that the Legislature uses the term, "should". I am not prepared to accede to the contention of the Counsel for the Crown that "should" here is equivalent to "could." I do feel reluctant to impute to the Legislature an ignorance of the meaning of this familiar word; on the other hand, I take "should be tried", in its ordinary sense, as equivalent to "ought to be tried", for "should" clearly implies a choice between two or more available alternatives. In fact there would have been no room for controversy if the Legislature had used the term "question" instead of the word "doubt". I am not impressed by the argument that if Section 185 was intended to have such a wide scope as, is contended on behalf of the accused, it would have been framed in the same terms as Section 527 which authorises a transfer by the Governor-General in Council on the ground of convenience. The two Sections have entirely different scopes. In the first place, the order u/s 527 is an executive order which may be made without opportunity afforded to the accused to be heard. In the second place, Section 527 contemplates an order for transfer, and recourse may possibly be had thereto if an order made by one High Court u/s 185 is disregarded by another High Court. I hold accordingly that the view taken in the cases of Hrian Kumar Chowdhury v. Mangal Sen (2) and Emperor v. Chaichal Singh (3) gave effect to the true intention of the Legislature, though in the former of these cases, the order was not made in strict conformity with the terms of Section 185; and I am constrained to dissent from the decision in Rajani Benod Chakravarti v. All India Banking and Insurance Company (1). The second question formulated by me must, like the first, be answered in the negative. In this view, it is unnecessary for me to consider whether even if the narrower construction were adopted, the present case would, in so far as the accused is charged with an offence u/s 409, Indian Penal Code, fall within the purview of Section 185, by reason of a conflict of judicial opinion regarding the true construction of Section 179 and the consequent doubt as to the jurisdiction of the Trial Court.

41. The question finally arises, whether in the circumstances of the present case an order u/s 185 should be made in favour of the accused. Upon a full consideration of the facts which have been reviewed in detail by the learned Chief Justice in the judgment he has just delivered and which I cannot usefully supplement, I see no escape from the conclusion that the balance of convenience is on the whole in favour of a trial here. In my judgment the Bale should be made absolute and an order made in terms of Section 185.

Chaudhuri, J.

42. My answers are to be found in the order of reference. I have nothing to add to what I have said. The reasons why I think that the case should be tried in Calcutta are to be found in my separate judgment which is to be considered as part of my judgment in this reference.

Newbould, J.

43. I wish to add some remarks to the joint judgment of reference to make my individual opinion more clear. Though I hold we have powers to pass orders u/s 185, Criminal Procedure Code, on the application of the accused petitioner, I do not think it was intended that the Section should be used for this purpose. It seems to me that the Legislature by giving jurisdiction to several Courts in the previous Section of Chapter XV intended, as far as possible, to remove doubts as to jurisdiction in cases in which such doubt might otherwise arise. There was no necessity to add Section 185 to remove doubts as to jurisdiction. Even if doubts did arise as to the interpretation of these previous Sections, they could be dealt with in the same way as doubts as to jurisdiction which frequently occur in connection with other parts of the Code. But when more Courts than one had been given jurisdiction to try the same offence, it became necessary to provide for a possible deadlock which would occur if two Courts either each refused to take action on the ground that the case should be tried by the other Court or both proceeded to try the same case. It seems to me clear that this Section was enacted to provide for such a difficulty and the doubt mentioned in the Section is not a doubt as to jurisdiction but a doubt as to which Court having jurisdiction should try the case under such circumstances. On such a doubt arising the High Court exercising powers u/s 185 would have to decide with reference to the convenience of all concerned. Though it was not intended that this Section should enable an accused to apply for a transfer on the ground of his personal convenience, the wording of the Section is sufficiently wide to give a High Court power to take action on such an application. I entirely agree with the remarks of Mr. Justice Woodroffe as to the danger of an obstruction to administration that could be caused by an improper use of this Section. To avoid this danger I think that these powers should seldom be exercised on the application of an accused, and only if he be able to convince the Court that a refusal to exercise these powers is likely to lead to a miscarriage of justice. This, for reasons I have given in my previous judgment, I hold the present petitioner has failed to do so.

44. I accordingly agree with my Lord the Chief Justice as to the answer to be given to the first two questions referred and adhere to my original opinion that the third question should be answered in the negative and the Rule discharged.

Lancelot Sanderson, C.J.

45. In consequence of the opinion of the majority the Rule is made absolute and the order will be drawn up in terms of Section 185 of the Criminal Procedure Code, as indicated in the judgment.