

(1871) 11 CAL CK 0002

In the Calcutta High Court

Case No : Miscellaneous Criminal Case No. 89 of 1871

**In Re: Government of Bengal
 The Queen**

Date of Decision : 28-11-1871

Acts Referred:

Citation : (1871) 11 CAL CK 0002

Judgement

Sir Richard Couch, Kt., C.J.—The question which is referred to us is (reads). Section 95 (Act XX of 1866) provides that "a prosecution for any offence under this Act coming to the knowledge of a Registering Officer in his official capacity may be instituted by the Registrar General, the Registrar, or," which is this case "(with the sanction of the Registrar to whom he is subordinate), the Sub-Registrar in whose territory, district or sub-district, as the case may be, the offence has been committed." And that "all prosecutions under this Act shall be instituted before a person exercising the powers of a Magistrate or Subordinate Magistrate of the first class."

2. I think that the Legislature, when this section was passed, did not contemplate the Sub-Registrar being also the Magistrate, and himself exercising the powers of a Magistrate and trying the case; and certainly where it can be done it would, to my mind, be better that some other person than the Sub-Registrar should try the case. But I agree with the referring Judges in thinking that the words of the section do not indicate that he must be another person. The words of the section are not sufficient to prohibit him from doing it; and therefore the other question arises whether there is any general rule of law with regard to the Judge being interested which would apply, and which would prevent the Sub-Registrar being the Magistrate who tried the case.

3. Now the interest which disqualifies a Judge is not merely a pecuniary interest; that would be too limited a way of describing such an interest; but in describing it we ought rather to use the language of Norman, J., in the case of *The Queen v. Mukta Sing* 4 B.L.R., Ap. Cr., 15, 20 that is to say "a personal or a pecuniary interest." A Magistrate could not try a person for an assault upon himself; and without defining precisely what amounts to personal interest, it appears to me

that there must be either a personal or pecuniary interest in order to disqualify a Judge or Magistrate from exercising the general jurisdiction which is conferred upon him. It is not a question of want of jurisdiction so much as of a disability arising from interest to exercise his jurisdiction in the particular case.

4. In this case I think the Sub-Registrar has not such an interest in the matter as disqualifies him from trying the case; and. I may observe, with reference to Borne of the arguments that have been used as to the Sub-Registrar having made up his mind and that the accused would have no chance of a fair trial, that the sanction of the superior officer, the Registrar, is required before the prosecution can be instituted, and certainly I do not consider that the prosecution will not be instituted unless the Sub-Registrar has made up his mind as to the guilt of the party. It is his duty, when he comes to know that an offence has been committed, to cause a prosecution to be instituted; by which I understand that there is prima facie evidence of an offence having been committed, that there is that which renders it proper that there should be an enquiry, and the Registrar accordingly gives his sanction to it; and certainly, I cannot suppose that, because an officer in his position sanctions the institution of a prosecution, his mind is made up as to the guilt of the party, And that he is not willing to consider the evidence which may be produced before him when he comes to try the case. In this case there appears to be no such interest as would prevent the case from going before the Magistrate as the trying authority; but, as I have already said, it would be better, where it can be avoided, that it should not be done, and it may very well be that the Court in its discretion would in similar cases direct the transfer of the case, in order that it should be tried by some other officer.

5. Section 172 of the Code of Criminal Procedure does not, in my opinion, afford any argument in favour of the proposition that the Sub-Registrar could not try the case. I understand section 172 to be this, that whereas the Court of Session would not have authority before the passing of the Code to frame a charge, or commit for trial in respect of offences committed under the preceding sections, a special power is given to it in this particular instance to do so. That is a sufficient explanation of section 172, and the section does not afford any-ground for the contention of Mr. Gregory, that, because there is a special provision of that kind, by the general law a Judge instituting proceedings against a person cannot also try him.

6. I think that the question that has been put to us by the Division Court must be answered in the negative, that it is not illegal or without jurisdiction or otherwise bad for the Magistrate to try a person in the case supposed.

7. Then there is another question which it may be well to consider, namely, what order should be made upon this answer being given to the question referred? I rather think that had better be disposed of by the learned Judges who referred the question, as they can deal with that matter better than we can, having had all the facts of the case before them.

Loch, J.

8. I concur.

Jackson, J.

9. I am of the same opinion. I admit that I have not been free from doubt. It seems to me, on reading the terms of section 95, Act XX of 1866, that the Legislature had in contemplation, first the person by whom proceedings of this kind might be instituted, and then a Magistrate of a specified grade, before whom such charges must be instituted, and that the Legislature, in passing that section, did not contemplate the union of those two capacities in the same person. I admit, however, that the Legislature has not in this instance used words sufficiently clear to exclude the union of those two persons. In the case of *The Queen v. Chandra Sikar Rai* 5 B.L.R., 100 we had to deal with the wording of a different Act where the words used were more emphatic. There the law speaks of sending a particular person, in custody and charged with having committed a certain offence before a specified Magistrate. If the same words had been found in section 95, Act XX of 1866, I should probably have held the same opinion in this case as I did in the other case.

Glover, J.

10. I concur in the answer to be proposed given to the question referred by the Division Bench.

Mitter, J.

11. I concur in the proposed answer to the reference.

Ainslie, J.

I concur.

(2)Before Mr. Justice Kemp and Mr. Justice Ainslie.

The 26th November 1870.

In re Bharat Chandra Sen, Petitioner.

Baboos Kali Mohan Das and Nalit Chandra Sein for the petitioner

Kemp, J.--This is an application on the part of Bharat Chandra Sein, head clerk in the Sub-Registrar's office of Tipperah.

The point taken by his pleader is that the Magistrate who is also Sub-Registrar investigated the case in the first instance, and subsequently tried and convicted his client as Magistrate.

We think that, on the principle that no one should be a Judge in any case in which he is himself interested, as also on the principles laid down in a decision of a Divisional Bench of this Court in *The Queen v. Chandra Sikar Rai* 5 B.L.R., 100

the Magistrate ought not to have tried this case.

We therefore quash his proceedings, and direct that the case be tried by some other official having power to try it.

The fine must be refunded.