
(1877) 07 AHC CK 0001
In the Allahabad High Court

The Empress of India

APPELLANT

Vs

Kanchan Singh

RESPONDENT

Date of Decision : 13-07-1877

Acts Referred:

Citation : (1875) ILR (All) 413

Hon'ble Judges : Robert Stuart, C.J;Turner, J;Spankie, J;Pearson, J;Oldfield, J

Bench : Full Bench

Judgement

Robert Stuart, C.J.—In this reference the question is whether the Sessions Judge of Mainpuri was justified in ordering a commitment to this Court on a charge under Sections 457 and 380 of the Indian Penal Code q.v. supra 1 All. 413, as being a "session case" within the meaning of Section 296 of the Criminal Procedure Code, read in connection with Section 4 of the same Code, where the expression "session case" is defined. The procedure which gave rise to the appeal to this Court, and the question submitted by this reference, appear to be as follows: The appellant, Kanchan Singh, and another accused person, named Mathri, were brought up before and tried by the Assistant Magistrate on a charge u/s 457 of the Indian Penal Code, with the result of Mathri's conviction and the appellant's discharge. The discharge of the appellant, Kanchan Singh, being unsatisfactory to the Sessions Judge, he ordered a commitment to the Sessions Court and the appellant was committed, tried, and convicted there accordingly. The validity of such order of commitment is one of the pleas in appeal.

2. In Section 4 of the Criminal Procedure Code the following is the definition of a "session case." "Session case means and includes all cases specified in column seven of the fourth schedule to this Act as cases triable by a Court of Session, and all cases which Magistrates commit to a Court of Session, although they might have tried them themselves." Now if we had nothing else to consider than the true construction of this section itself, our task would be an easy one, and here I must say that we are not much assisted by some of the remarks made by Mr. Justice Jardine in the case mentioned in tire present reference H.C.R. N.W.P.

1873 p. 168. In the report of his judgment he is made to say that the words "triable by a Court of Session in Section 4 must be read as if they had been printed in inverted commas," but, in my opinion, it is not legitimate to interpret laws in this manner, whether by the importing of words of limitation, or extension, or fanciful punctuation. If the inverted commas had been used as suggested, the meaning and application of Section 4 would have been altogether changed from what it is in its present shape. I could understand the suggestion that these words "triable by a Court of Session" might, with advantage, have been imported into Section 296 immediately after the words "session case," but it is altogether beside the rules of legal construction to attempt to interpret such a section as Section 4 by such a device. Then, again, I must express my dissent where Mr. Justice Jardine says it is "on principle wrong that a Session Judge should have power to order a committal in spite of a discharge by a Magistrate, who had himself full power to try and acquit. Where the Magistrate's powers are restricted to preliminary enquiry, it is reasonable that the Session Court should have power to control the result of that enquiry. But where the Magistrate could pass a final order of acquittal, I see no reason for giving the Session Court power to disturb this order, because it takes the form of a discharge." On the contrary, I do not only see nothing wrong on principle, but; judging from my own experience in criminal cases in this Court, it would, I consider, be very convenient and advantageous if Session Judges had such a power of correction and control over their Magistrates. But all these speculations and fanciful views of legal interpretation are really beside the question of the true construction of Section 4, nor are they necessary to the elucidation of Section 296,* the correct application of which, in my view, depends, at least so far as the present case is concerned, on a much simpler test, which I do not find noticed neither in the judgment of Mr. Justice Jardine, or in any of the other authorities which have been referred to. As to Section 4 itself, anything more simple or more obvious in meaning than the language of that section I cannot imagine. It very plainly provides that "session case" means and includes all cases triable by a Court of Session itself, that is, if you prefer it, by a Court of Session only, or exclusively, and also all cases which Magistrates commit to a Court of Session for trial. These are the two classes of cases which by Section 4 are to be understood as session cases, the one neither more nor less so, than the other. Nor is the definition, given in this Section 4 of a Magistrate's case in the slightest degree inconsistent with such a definition of a session case. A Magistrate's case, the section says, means and includes all cases triable by Magistrates, and all cases which Magistrates try themselves, although they might have committed them for trial to a Court of Session, being the very cases which, when committed to a Court of Session, become ipso facto session cases. In fact it comes to this, that by Section 4 the term "session case" applies to cases triable by a Court of Session alone, and also all other cases (doubtful cases as Mr. Justice Jardine calls them, although why they should be so described I cannot see), in which the Court of Session has, by force of the commitment to it, concurrent jurisdiction with the Magistrate.

3. Such are the observations suggested to me by the consideration of Section 4 taken by itself, and without reference to any other part of the Criminal Procedure Code. But when we come to Section 296, we find it necessary to understand a session case in a more limited sense. The second part of that section provides that "in session cases, if a Court of Session or Magistrate of the district considers that a complaint has been improperly dismissed, or that an accused person has been improperly discharged by a Subordinate Court, such Court or Magistrate may direct the accused person to be committed for trial upon the matter of such complaint, or of which the accused person has been, in the opinion of the Court or Magistrate, improperly discharged." Now there can be no doubt that this section strictly and literally applies to cases triable by the Court of Session itself, but does it apply to these cases exclusively and not to the second class of session cases which Section 4 defines? The answer to this question is supplied by the definition given in Section 4 of the other class of session cases, namely, those which Magistrates commit for trial to the Court of Session. The word "commit" is, I consider a governing word in this sentence, and everything depends upon its right construction. If it could be taken to mean "may commit," then unquestionably Section 296 would let in these Magistrates' cases where a commitment had not been made. But as I view this part of Section 4, the fact of the committal to the Court of Session is the essential quality of such session cases. On the other hand, the remedy provided by Section 296 assumes that there had been no previous commitment to the Court of Session at all, and the Judge is simply empowered, in that state of things, to order a commitment. It follows, therefore, that such remedy cannot contemplate the second class of session cases defined by Section 4, for there, as I have pointed out, commitment to the Court of Session, as a fact and proceeding already completed, is assumed or taken for granted, and no other or further order of commitment is necessary, or, from the nature of the case, possible. Any other view would involve the absurdity of the Sessions Judge ordering a commitment which has already been made to the Sessions Court by the Magistrate himself. In fact in no view of it can Section 296 be read as applicable to a Magistrate's case, and the question of commitment or no commitment is immaterial, for if the Magistrate did not commit the present case to the Court of Sessions, and he in fact did not, then the case is not a session case within the meaning of Section 4, while if he did commit, there was no necessity and no reason for any other commitment, whether by the Judge's order or otherwise. The result, therefore, is that the session cases referred to in Section 296 are session cases triable by the Court of Session only, and the present case being a Magistrate's case, and not one triable by the Court of Session only, the Judge's order to commit it was illegal.

4. I think it unnecessary to make any further remarks on the rulings referred to in the order of reference. In my own judgment in the case of Sibold (unreported, decided on 9th April 1874) I do not appear to have entered into the question very fully, and I remark that the case in which Mr. Justice Jardine's ruling was made was different from the one then before me, and in the glance I then gave

to the matter, I may not have sufficiently considered the phraseology of a. 4. As to the Calcutta Jay Karan Singh v. Man Pathack (17th February 1875), and Madras 1871 7 Mad. 28 of Killings cases, they appear to have been properly disposed of; although I observe that the Calcutta judgment Jay Karau Singh v. Man Pathack, (17th February 1874), simply repeats Mr. Justice Jardine's argument, and the Madras ruling appears to have been made by the Court itself, on a reference to it, without any argument from the bar.

Pearson, J.

5. I concurred at the time in the ruling (on the 26th May 1873) by the late Mr. Justice Jardine in the case of the Queen v. Sital Prasad H.C.R. N.W.P. 1873, and on further consideration I see no good ground for questioning its correctness. The reasons assigned by him in support of it are, in my opinion, as conclusive as they are well nigh exhaustive. Little has been left by him to be said on the subject. The terms used in the designation of a session case in Section 4 of Act X of 1872 "all cases specified in column seven of the fourth schedule to this Act as triable by a Court of Session," are not synonymous with all cases triable by a Court of Session. We find various specifications in the seventh column of the schedule; some cases are specified as triable by a Court of Session; others as triable by a Court of Session or by a Magistrate of the first class; others again as triable by a Magistrate of the first or second class; others as triable by any Magistrate, and so on. Evidently, as it seems to me, those simply specified as triable by a Court of Session, which are triable by that Court exclusively, are those indicated in the first part of the definition as session cases.

6. The definition of a session case is followed by the definition of a Magistrate's case for the purpose of distinguishing the one from the other. The two definitions comprehend all triable cases and, read together, explain one another.

7. There are many cases which a Magistrate may either try himself or commit for trial to a Court of Session; and the definitions declare such cases, if tried by the Magistrate, to be Magistrate's cases, and if committed to the Court of Session, to be session cases.

8. Session cases, therefore, include along with cases exclusively triable by a Court of Session, and Magistrate's cases include along with cases exclusively triable by Magistrates, cases triable by them or by a Court of Session, which they, in the exercise of their discretion, elect to try themselves.

9. The ruling gives full effect and meaning to every part of the definitions, and is perfectly consistent with, and agreeable to them. There is, too, much force and pertinence in the remark that "it seems, on principle, to be wrong that a Sessions Judge should have power to order a committal in spite of a discharge by a Magistrate who had himself powers to try and acquit. Where the Magistrate's powers are restricted to preliminary enquiry, it is reasonable that the Session Court should have power to control the result of that enquiry. But where the Magistrate could pass a final order of acquittal, I see no reason for giving the

Session Court power to disturb that order because it takes form of a discharge."

10. The case out of which the present reference has arisen is, according to the ruling in question, a Magistrate's case. It is not a case exclusively triable by a Court of Session, nor was it committed to that Court. It was triable by a Court of Session or by a Magistrate of the first or second class; and was tried and disposed of by a Magistrate. To rule that this is a sessions case on the ground that the terms before quoted in the definition of a session case do not mean cases exclusively triable by a Court of Session, but include cases triable by a Court of Session and a Magistrate, would lead to this result, that all cases triable by a Court of Session, or a Magistrate, are both sessions cases and Magistrate's cases: and would thus confound what the definitions were carefully designed to distinguish.

Turner, J.

11. It appears to me that the definitions of "Sessions case" and "Magistrate's case," respectively, must be read together, and that so read, all difficulty in their construction disappears.

12. There are some cases specified in the schedule as triable by a Court of Session, there are others specified in the schedule as triable by Magistrates; again, there are cases specified as triable either by a Magistrate or a Court of Session, and lastly, there are cases in which, though ordinarily triable by a Magistrate, an accused person, if he be an habitual offender, may be committed to the Court of Session.

13. Now in order to bring all these classes under two heads, the definitions, as I understand them, declare that sessions cases mean and include all cases triable by a Court of Session exclusively, and all cases of the classes in which jurisdiction is given to the Sessions Court, or to the Magistrate if the Magistrate elects to commit them, and that Magistrate's case means and includes all cases specified as triable by Magistrate exclusively, and also all cases of those classes in which jurisdiction is given to the Court of Session or the Magistrate, if the Magistrate elects to try himself. If the other construction be adopted, and the term triable by a Court of Session in the first definition, be held to include cases triable by the Court of Session or the Magistrate, a case of that class tried by a Magistrate will fall under both definitions and the anomaly will arise which was pointed out by Mr. Justice Jardine in *Regina v. Sited Prasad* H.C.R. N.W.P. 1873 p. 168 that a Sessions Judge may order a committal if the Magistrate discharges an accused person whom he had power to try and acquit, when the Sessions Judge cannot interfere to set aside an acquittal, except on the appeal of the Government. Seeing that the construction adopted by Mr. Justice Jardine has approved itself to the High Courts of Calcutta and Madras, I am the more confident in accepting it.

Spankie, J.

(after quotation of Sections 4 and 296* of Act X of 1872 continued):

14. It is contended that a sessions case means a case triable by the Court of Session only.

15. The late Mr. Justice Jardine in this Court H.C.R. N.W.P. 1873 p. 168 held that the words "triable by a Court of Session" in Section 4 must be read as if they had been printed in inverted commas. This lie considered would limit the meaning of "cases specified" as triable by a Court of Session alone. This view was supported by a consideration of the two definitions together. We might expect, the learned Judge remarked, that "the two would just cover all possible cases, and this upon the view above expressed is found to be the fact. Sessions cases include all those which the Court of Session alone can try, and such as are committed to the Court of Session. Magistrates' cases include all those which only Magistrates are to try, and so many of the doubtful cases as the Magistrates do, in fact, try themselves. It seems, moreover, on principle to be wrong that a Sessions Judge should have power to order a committal in spite of a discharge by a Magistrate who had himself full power to try and acquit; when the Magistrate's powers are restricted to preliminary enquiry, it is reasonable that the Sessions Court should have power to control the result of that enquiry. But where the Magistrate could pass a final order of acquittal, I see no reason for giving the Sessions Court power to disturb his order, because it takes the form of discharge." It appears that Mr. Justice Pearson holds the same views, and that the Calcutta Jay Karan Singh v. Man Pathak 7th February 1874, and Madras Mad. H.C.R. 1871-74, p. 20 of Rulings, Courts have ruled to the same effect, that the Sessions Court can only order committal in cases exclusively triable by itself.

16. Referring to Section 4, I find nothing to support the view that sessions case means cases exclusively triable by a Court of Session. But I do find in the plainest language possible, that a sessions case means and includes all cases specified in column seven of the fourth schedule as cases triable by a Court of Session, and all those cases which Magistrates commit to a Court of Session, although they might have tried them themselves.

17. It is true that on reading the definition of a Magistrate's case, it would at the first glance seem that until a Magistrate had actually committed a case which he could have tried himself, it would not become a sessions case. But this construction would only hold good for the purpose of defining what is a Magistrate's case, and what a sessions case, and of so far regulating the exercise of their concurrent jurisdiction. This construction, however, does not necessarily limit the power of revision given by Section 296* to the Sessions Judge and District Magistrate. These words "sessions case" and "Magistrate's case" are only to be met with twice, respectively, in the Code, in Sections 4, 296, and 74. In Section 74+, which deals with offences committed by European British subjects, the words "a Magistrate's case" clearly refer to a case which is specified in column seven, schedule four, as triable by a Magistrate, which might be sent to the Sessions, but which the Magistrate is not to send to the Sessions, if he thinks that he can adequately punish it by any sentence warranted by law,

not exceeding three months" imprisonment or a fine up to one thousand rupees, or both. If he thinks that he cannot adequately punish it u/s 74, then he must commit to the Sessions Court, or High Court, as the case may be, u/s 75*. This, it is true, is a special part of the Code applying to European British subjects alone. But when we examine chapter XV and Sections 89+, 195++, and 196++, we find in the first section that the procedure to be adopted refers to cases triable (not exclusively triable) by a Sessions Court or High Court. By Section 195, a Magistrate can discharge an accused person, if he thinks there is no ground for committing him, and dispose of the case himself under chapters XVI, XVII or XVIII, as the case may be. By Section 196* if the Magistrate considers that the evidence justifies commitment for an offence exclusively triable by the Court of Session or High Court, he is to make the commitment to such Court, and he is to do the same, if he thinks that the case is one which ought to be tried by the Sessions Court, though it be not an offence exclusively triable by the Sessions Court. The section is mandatory where the case is exclusively triable by the Sessions Court, and permissive in other cases. But here we have exclusively used for a purpose; we shall find in Section 296, which deals with discharge u/s 195, no such use of the word at all. Section 296 + refers to the superintendence of the Subordinate Courts by the Sessions Judge and Magistrate of the district, and to the revision which they may exercise. The first para, provides for the report of cases to this Court in which the judgment or order is contrary to law, or the punishment too severe or inadequate. The second para, provides, that in sessions cases, if a Court of Session or Magistrate of the district considers that a complaint has been improperly dismissed, or that an accused person has been improperly discharged by a Subordinate Court, such Court or Magistrate may direct the accused person to be committed for trial. Now here we go back to the definition of a sessions case, and find that there is no such limit in Section 4, as that contended for, viz., that those cases only are sessions cases which can be tried by the Sessions Court alone. All those cases in fact are sessions cases which are specified in column seven of the fourth schedule as triable by the Court of Session, including all the cases which Magistrates commit to a Court of Session, though they might have tried them themselves. They are all cases specified in column seven, schedule four, and are triable by the Court of Session, though, if the Magistrate tries those himself which are within his jurisdiction to punish, they are not sent up to the Sessions. But they are not the less sessions cases, though they are within certain limits jointly triable by the Sessions Court and Magistrate of the first class, and because they are so, both the Sessions Court and the Magistrate of the district have the power to revise improper dismissal of complaints and discharges ordered by the Subordinate Magistrates.

18. This superintendence is part of their office. They are in a certain degree responsible for the proper discharge by their subordinates of their judicial duties. All the Magistrates are subordinate to the Magistrate of the district, but neither the Magistrate of the district nor the Subordinate Magistrates are subordinate to the Sessions Judge, except to the extent and in the manner provided by the Act

(Section 37)*. Under the old Act the subordination of the Magistrate to the Magistrate of the district was not clearly recognised, and 23g.+ was added by Section 4 of Act VIII of 1869. So by Section 435++ of the old Act, the Sessions Judge only could order commitment of an accused person, if he was charged with an offence triable by the Sessions Court exclusively. But the section was altered by Section 4, Act VIII of 1869, and he has now the power of doing so in cases in column seven, schedule four, not only triable by himself, but also by the Magistrate of the district. The Magistrate of the district also had the power of directing commitment or inquiry when the Magistrate who had discharged the accused person or dismissed his complaint without any investigation, was a subordinate Magistrate. But under the old Act, subordinate Magistrates were of two classes only, one with powers up to six months, and the other up to one month, as provided by Section 22§ of Act XXV of 1861. Under the present Act there are three classes of Magistrates, and all are subordinate to the Magistrate of the district. Thus, it became necessary, all Magistrates being subordinate to the Magistrate of the district, to enlarge the powers of that officer as a Court of superintendence and revision, and so both the Court of Session and the Magistrates of districts were empowered by the second para., Section 296, to direct a committal where a complaint had been improperly dismissed, or an accused person improperly discharged, in sessions cases. If we are to accept the view contended for by the appellant, then the alterations as regards this power of revision, made since Act XXV of 1861 was passed, would have no meaning, and there would be no reason for the omission of such words as exclusively triable by the Court of Session, which have no place in Section 4 and Section 296* of the present Code.

19. There is nothing opposed to principle in allowing this power of revision to the Court of Session and District Magistrate. A Magistrate of the first class may improperly -discharge an accused person u/s 195*, that is to say, in cases triable by a Court of Session, even though he may have, under the provisions of that section, proceeded under Chapters XVI and XVII, or XVIII. If the Magistrate of the district or Court of Session considered that there were sufficient grounds for commitment, then the accused would have been improperly discharged. Where a Magistrate improperly discharges an accused person u/s 215+, the High Court can order him to be tried or committed for trial; a discharge is not equivalent to an acquittal under either section. The Sessions Court is empowered to guard against a miscarriage of justice in cases triable by itself. The High Court has plenary power in all cases of improper discharge. No question of acquittal is applicable to the point before us. An acquittal may be appealed against by the Government. This is an exclusive privilege of Government. But private prosecutors, so to speak, have no other remedy but that afforded by Sections 296++ and 297? of the Code.

20. Being of opinion that it is not for us, who administer the law, to import into Section 4 and Section 296* of the Act, the words "exclusively" triable, or by the Court: of Session "alone," I would answer the reference by saying that the

Sessions Judge had the power to order the committal.

Oldfield, J.

21. I agree in the view taken by Mr. Justice SPANKIE of the question referred.

Order.

Pearson, J.

22. Passed the following final order in the above case.

23. The second ground is sustained by the opinion of the majority of the Full Bench. The proceedings of the Sessions Court must, therefore, be set aside as illegal, and the sentence passed on the appellant is accordingly annulled, and his release is ordered.

-----Foot Note-----

*[Report to High Court

Section 296: If the Court of Session or Magistrate of the District is of opinion that the Judgment or order is contrary to law, or, that the punishment is too serve or is inadequate, such Court or Magistrate may report the proceedings for the orders of the High Court.

Provided that, in session cases, if a Court of Session or Magistrate of the District considers that a complaint has been improperly dismissed, or that an accused person has been improperly discharged, by a Subordinate Court, Sudr Court or Magistrate may direct the accused person to be committed for trial.]

+ [Magistrates of the 1st Class, being European British subjects, and Justices of the Peace, may inquire into complaints against European British subjects.

[Section 71: Any competent Magistrate may inquire into complaints of any offence made against a European British subject.]

When such Magistrate pass on such European British subject any sentence warranted may try, and extent of his jurisdiction.

If the offence complained of is Magistrate's case and can, in the opinion of such Magistrate, be adequately punished by him, he shall proceed as is hereinafter in this Code directed, according to the nature of the offence; and, on conviction, may pass on such European British subject any sentence warranted by law, not exceeding three months' imprisonment, or fine, up to one thousand rupees, or both.]

*[When commitment is to be to Court of Session.

Section 75 : -When the offence complained of cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused

person ought to be committed, commit him to the Court of Session.

When commitment is to or transportation for life, the commitment shall be to the High Court.

When the offence complained of is punishable with death or transportation for life, the commitment shall be to the High Court.]

+ [All persons to give information of certain offences.

Section 89: Every person aware of the commission of any offence made punishable under sections one hundred and twenty-one, one hundred and twenty-one A, one hundred and twenty-two, one hundred and twenty-three, one hundred and twenty-four, one hundred and twenty-four A, one hundred and twenty-five, one hundred and twenty-six, one hundred and thirty, three hundred and two, three hundred and three, three hundred and four, three hundred and eighty-two, three hundred and ninety-two, three hundred and ninety-three, three hundred and ninety-four, three hundred and ninety-five, three hundred and ninety-six, three hundred and ninety-seven, three hundred and ninety-eight, three hundred and ninety-nine, four hundred and two, four hundred and thirty-five, four hundred and thirty-six, four hundred and forty-nine, four hundred and fifty, four hundred and fifty-six, four hundred and fifty-seven, four hundred and fifty-eight, four hundred and fifty-nine, or four hundred and sixty of the Indian Penal Code, shall in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Police officer or Magistrate.]

++ [When accused person to be discharged.

Section 195: When a Magistrate finds that there are not sufficient grounds for committing the accused person to take his trial before the Court of Session or High Court, or for remanding him, he shall discharge him, unless it appears to the Magistrate that such person should be put on his trial before himself, in which case he shall proceed under Chapters XVI, XVII, or XVIII of this Act.

Explanation I.--The absence of the complainant except when the offence may lawfully be compounded, shall not be deemed sufficient ground for a discharge, if there appear other evidence of a nature rendering a trial desirable.

Explanation II.--A discharge is not equivalent to an acquittal, and does not bar the revival of a prosecution for the same offence.

Explanation III.--An order of discharge cannot be made until the evidence of the witnesses named for the prosecution has been taken.]

? [When accused is to be committed for trial.

Section 196: When evidence has been given before a Magistrate which appears to justify him in sending the accused person to take his trial for an offence which is triable exclusively by the Court of Session or High Court, or which, in the

opinion of the Magistrate, is one which ought to be tried by such Court, the accused person shall be sent for trial by such Magistrate before the Court of Session or High Court as the case may be.]

*[When accused is to be committed for trial.

Section 196: When evidence has been given before a Magistrate which appears to justify him in sending the accused person to take his trial for an offence which is triable exclusively by the Court of Session or High Court, or which, in the opinion of the Magistrate, is one which ought to be tried by such Court, the accused person shall be sent for trial by such Magistrate before the Court of Session or High Court as the case may be.]

+ [Reported to High Court.

Section 296: If the Court of Session or Magistrate of the District is of opinion that the judgment or order is contrary to law, or that the punishment is too severe or is inadequate, such Court or Magistrate may report the proceedings for the orders of the High Court. Provided that, in sessions cases, if a Court of Session or Magistrate of the District considers that a complaint has been improperly dismissed, or that an accused person has been improperly discharged, by a Subordinate Court, such Court or Magistrate, may direct the accused person to be committed for trial.]

*[Subordinate Magistrates.

Section 37: The Local Government may appoint as many other persona besides the Magistrate of the District, as it thinks fit, to be Magistrates of the first, second or third class in the District.

All such Magistrates shall be subordinate to the Magistrate of the District, but neither the Magistrate of the District, nor the Subordinate Magistrates shall be subordinate to the Sessions Judge, except to the extent and in the manner provided by this Act.

Proviso.

The Local Government shall not have power to direct that any Magistrate may try any offence which Magistrates of his class are not authorized to try, or pass any sentence which Magistrates of his class are not authorized to pass by section twenty.]

Subordination of all Magistrates to the Magistrate of the District.]

+ [Section 23(G): Except as otherwise provided in this Act or by any other law, for the time being in force, all Magistrates and Subordinate Magistrates shall be subordinate to the Magistrate of the District in which they exercise jurisdiction.]

++ [When Courts, the offences mentioned in the schedule are triable, and within what limits such Courts may pass sentence.

Section 435: In case of offences not triable by the Magistrate, the Court of Session may order the commitment to the Court of Session of any accused person who may have been discharged by the Magistrate. In the case of such offences the Court of Session may order an enquiry into any complaint which the Magistrate may have dismissed without enquiry.]

[By what Courts, the offences mentioned in the schedule are triable, and within what limits such Courts may pass sentence.

Section 22: The offences mentioned in the schedule annexed to this Act shall, subject to the provision contained in the third explanatory note prefixed to the said schedule, be triable by the Courts specified in column 7 of the said schedule, and such Courts shall be competent to pass sentence in respect of such offences within the following limits (that is to say):

The Court of session.

Powers of Court of Session.

Death (subject to confirmation by the Sudder Court). Transportation, imprisonment of either description for a period not exceeding fourteen years, including such solitary confinement as is authorized by law, or fine to an unlimited amount, or both transportation and fine, or imprisonment and fine in cases in which both punishments are authorized by the Indian Penal Code. In cases in which, according to the Indian Penal Code, forfeiture of property may be adjudged, the Court of Session may adjudge such forfeiture in addition to the sentence.

Assistant sessions Judges

In the Presidency of Bombay it shall be lawful for a Sessions Judge to delegate cases for trial by an Assistant Sessions Judge: and such Assistant Sessions Judge shall be competent in such cases to pass sentences within the following limits: Imprisonment of either description for a term not exceeding seven years (including such solitary confinement as is authorized by law), or fine or both. If the sentence be one of imprisonment for a term exceeding three years, it shall be passed subject to confirmation by the Sessions Judge. The Sessions Judge may review and hear appeals, against the proceedings of his Assistants, and may confirm and amend (but not so as to enhance) or may reverse their sentences or orders. It shall not be competent to an Assistant Sessions Judge to review or hear an appeal against the proceedings of a Magistrate.

Powers of the Magistrate of the district.

The Magistrate of the District or other Officer authorised to exercise the powers of a Magistrate. Imprisonment of either description not exceeding the term of two years, including such solitary confinement as is authorised by law, or fine to the extent of one thousand Rupees, or both imprisonment and fine in all cases in which both punishments are authorised by the Indian Penal Code.

Subordinate Magistrates or Officers authorised to exercise any of the powers of a Magistrate:

Powers of Subordinate Magistrates, 1st class.

Imprisonment of either description not exceeding six months, or fine not exceeding two hundred Rupees, or both imprisonment and fine in all cases in which both punishments are authorized by the Indian Penal Code.

2nd Class.

2nd Class. Imprisonment of either description not exceeding one month, or fine, not exceeding fifty Rupees, or both imprisonment and fine in all cases in which both punishments are authorised by the Indian Penal Code.

No sentence of solitary confinement, u/s 73 of the Indian Penal Code, shall be passed by any Court inferior to an Officer exercising the powers of a Magistrate.]

+ [Discharge of accused.

Section 215: When the evidence of the complainant and of the witnesses for the prosecution, and such examination of the accused person as the Magistrate considers necessary, have been taken, the Magistrate if he finds that no offence has been proved against the accused person, shall discharge him.

Explanation I.--The absence of the complainant, except where the offence may be lawfully compounded, shall not be deemed sufficient ground for a discharge, if there appear other evidence sufficient to substantiate the offence.

Explanation II.--A discharge is not equivalent to an acquittal, and does not bar the revival of a prosecution for the same offence.

Explanation III.--An order of discharge cannot be passed until the evidence of the witnesses named for the prosecution has been taken.]

? [Powers of revision.

Section 297: If in any case either called for by itself or reported for orders, or which comes to its knowledge, it appear to the High Court that there has been a material error in any judicial proceeding of any Court subordinate to it, it shall pass such judgment, sentence or order thereon as it thinks fit.

Power to order commitment.

If it considers that an accused person has been improperly discharged, it may order him to be tried, or to be committed for trial;

Power to alter finding and sentence.

If it considers that the charge has been inconveniently framed, and that the facts of the case show that the prisoner ought to have been convicted of an offence other than that of which he was convicted, it shall pass sentence for the offence

of which he ought to have been convicted;

Proviso as to power of altering finding.

Provided that, if the error in the charge appears materially to have misled and prejudiced the accused person in his defence, the High Court shall annul the conviction, and remand the case to the Court below, with an amended charge, and the Court below shall thereupon proceed as if it had itself amended such charge;

Power to annul conviction.

If the High Court considers that any person convicted by a Magistrate has committed an offence not triable by such Magistrate, it may annul the trial and order a new trial before a competent Court;

Power to annul improper and to pass proper sentence.

If it considers that the sentence passed on the accused person is one which cannot legally be passed for the offence of which the accused person has been convicted or might have been legally convicted upon the facts of the case, it shall annul such sentence and pass a sentence in accordance with law.

If it considers that the sentence passed is too severe, it may pass any lesser sentence warranted bylaw; if it considers that the sentence is inadequate, it may pass a proper sentence.

Suspension of sentence.

The High Court may, whenever it thinks fit, order that the sentence in any case coming before it as a Court of Revision, be suspended; and that any person imprisoned under such sentence be released on bail, if the offence for which such person has been imprisoned be bailable.

Powers of revision confined to High Court.

Except as provided in sections three hundred and twenty-eight and three hundred and ninety-eight, no Court, other than the High Court, shall alter any sentence or order of any Subordinate Court, except upon appeal by the parties concerned.

Optional with Court to hear parties.

No person has any right to be heard before any High Court, in the exercise of its powers of revision, either personally or by agent, but the High Court may, if it thinks fit, hear such person either personally or by agent.]