

rial. The Court, therefore, reverses the order of acquittal made under these circumstances by the Senior Assistant Session Judge, and directs that the trial be proceeded with.

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Order of acquittal reversed.

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Aug. 26.

District Magistrate—Full Power Magistrate—Subordinate Magistrate—Crim. Proc. Code, Ch. XVI., and Secs. 14, 273, and 434.

Held that the Magistrate of a District before whom a criminal case is brought, either on complaint preferred directly to such Magistrate, or on the report of a Police Officer, cannot, under Sec. 273 of the Criminal Procedure Code, refer such case to a Magistrate F. P.

A Magistrate F. P., though executive inferior to the Magistrate of the District, is not a "Subordinate Magistrate" within the meaning of Ch. XVI. of the Criminal Procedure Code, nor is he "immediately subordinate" to the District Magistrate, within the meaning of Sec. 434 of the same Code.

THIS case was referred for the orders of the High Court, under Sec. 434 of the Criminal Procedure Code, by T. C. Hope, Magistrate of the District of Súrat.

The facts appear from the judgments.

The case was argued before a Full Bench (COUCH, C.J., NEWTON, WESTROPP, TUCKER, WARDEN, and GIBBS, JJ.) on the 5th of August 1868.

White (with him *Dhirajlál Mathurádás*, Government Pleader) for the Crown.

Cur. adv. vult.

COUCH, C.J. :—In this case a complaint was made to the Magistrate of the District of Súrat of voluntarily causing hurt, and he referred the case to a Magistrate F.P., who refused to hear it; and the question we have to determine is whether he was right in his refusal. The opinion that a Magistrate with full powers is not subordinate to the Magistrate of the District in the sense in which that word is used in the Code of Criminal Procedure, and that the Magistrate of the District has not power to refer a case to him, was, I understand, held by the late Chief Justice and Mr. Justice Hebbert and Mr. Justice Forbes; and this

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Court has, from the time of its establishment, acted upon that view of the law. But the correctness of this opinion has lately been questioned, apparently in consequence of the circular of the High Court at Calcutta,* as to the meaning of the term "immediately subordinate" in Sec. 434 of the Code of Criminal Procedure; and we, therefore, thought it right that the matter should be argued before a Full Court.

In the case of *Dipchand Khushál (a)* it might seem that the point was decided by this Court, as the Session Judge had broadly laid down the proposition that the Magistrate of the District has no power to refer a case to a Magistrate F. P., and the Court reversed the conviction. But there the case had not been brought before the Magistrate of the District either on a complaint preferred directly to him, or on the report of a Police Officer, to which cases only Sec. 273 of the Code of Criminal Procedure is applicable; but the case was sent by a Munsif for investigation under Sec. 16 of Act XXIII. of 1861. If it is to be contended that the Magistrate of the District has power to refer such a case to another Magistrate, some other provision of the law than Sec. 273 must be relied on. It would not be right to treat the case of *Dipchand Khushál* as deciding generally that the Magistrate of the District has no power to refer any case to a Magistrate F. P.

In the present case, where a complaint was preferred directly to the Magistrate of the District, the determination of the question depends upon the construction which is to be put upon Sec. 273. It is the first of a series of sections forming Ch. xvi. of the Code of Criminal Procedure. It commences thus:—"Criminal cases brought before the Magistrate of the District, or a Magistrate in charge of a Division of a District, either on complaint preferred directly to such Magistrate, or on the report of a Police Officer, may be referred by such Magistrate to any Magistrate subordinate to him." Now the words "any Magistrate," by the interpretation clause, Sec. 15, include Magistrates with full powers as

* No. 2 (7 Cal. W. Rep., Cri. Cir. Orders, p. 1).

(a) 4 Bom. II. C. Rep., Cr. Ca. 30.

well as persons exercising less than the full powers of a Magistrate; and the words "subordinate to him" may mean either that the Magistrate is subject to have his decision appealed against, or revised by the Magistrate of the District, or simply that he is what is called executively subordinate to him. In order to ascertain the intention of the Legislature, it is necessary to look at the whole of the section. It proceeds—"The reference shall be for inquiry, or for trial if the offence be triable by such Subordinate Magistrate, or with a view to commitment to the Court of Session, or with a view to commitment to the Supreme Court of Judicature if such Subordinate Magistrate is competent to commit to such Supreme Court. Provided that nothing in this section shall prevent any Subordinate Magistrate from entertaining, either on complaint preferred directly to such Magistrate, or on the report of a Police Officer (in cases in which the Subordinate Magistrate is authorised to receive such report), any case that such Magistrate is, by any law for the time being in force, competent to entertain." I think the introduction of the word "subordinate" before "Magistrate" in this part of the section, which describes the nature of the reference, shows the intention of the Legislature to be, that the section was to be applicable to the class of Magistrates known in the Code as Subordinate Magistrates. Otherwise it would have been enough, wherever the word is used in this section, to have said merely "such Magistrate." If we look at other parts of the Code to ascertain what is meant by a subordinate Magistrate, we find in Sec. 22 certain officers so called, whose powers are defined. What is called executive subordination is nowhere defined, and, except in Sec. 14, is not alluded to. Then in the other sections in Ch. XVI. we find the same use made of the word "subordinate," and the provisions of Sec. 277 cannot be applicable to Magistrates with full powers.

Further, if the words of the section admit of any reasonable doubt, the title of the chapter may be looked to. This is allowable with regard to the title of an Act of Parliament; and the heading of a chapter is more specific, and likely

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more accurately to express the intention. In *Marriage v. The Eastern Counties Railway Company (b)*, the heading of a set of sections of the Land's Clauses Consolidation Act, 1845, was referred to in order to interpret one of the sections. Now the heading of Ch. xvi. is "Of inquiries and trials before the subordinate Magistrates," and who are "the subordinate Magistrates" here intended? Not, I think, Magistrates with full powers, to whom the provisions in Ch. xii., xiii., xiv., and xv. are applicable, but the Subordinate Magistrates mentioned in the previous part of the Code. Collecting then, as I must do, the intention of the Legislature from the language it has used, I am of opinion that Magistrates with full powers do not come within Sec. 273, and that the Magistrate of the District has not power under that section to refer cases to them.

If I thought the meaning of the section doubtful, and that it was allowable to me to consider the consequences of this construction, I am unable to see that any inconvenience to the public will be caused by requiring the Magistrate of the District, when the case brought before him is beyond the jurisdiction of a Subordinate Magistrate of the First Class, to dispose of it himself, and to exercise the powers which the law has conferred upon him, and which it may reasonably be presumed were conferred by the Legislature with a view to their being exercised. The circular of the High Court at Calcutta as to the interpretation of Sec. 434 does not alter my opinion. Indeed, notwithstanding my great respect for the Chief Justice of that court, who appears to have been present at the issuing of it, I doubt whether Sec. 434 is correctly interpreted in it. The section appears to intend that the Magistrate who calls for and examines the record, and the Magistrate who refers the proceedings for the orders of the High Court, shall be one and the same person, and the direction that the Magistrate of the District shall forward the proceedings of a Full Power Magistrate through the Sessions Judge, does not seem to me to be consistent with the terms of the section. I think, therefore, that the

reference in this case was not authorised by law, and the Magistrate to whom it was made was justified in declining to receive it. The order of reference must be annulled; and the Magistrate of the District may refer the case to a Subordinate Magistrate, it being one which a Subordinate Magistrate is competent to entertain.

My brother Westropp, who is not able to attend at this side of the court to-day, has seen my judgment, and has expressed his concurrence in it. It should, therefore, be considered the judgment of both of us.

NEWTON, J.:—It is enacted in Sec. 273 of the Code of Criminal Procedure that “criminal cases brought before the Magistrate of the District, or a Magistrate in charge of a Division of a District, either on complaint preferred directly to such Magistrate, or on the report of a Police Officer, may be referred by such Magistrate to any Magistrate subordinate to him;” and we are called on to decide whether, within the meaning of the concluding words of this clause, a Magistrate with full powers is subordinate to the Magistrate of the District.

Several considerations lead me to the conclusion that he is not.

I entirely concur with the learned Chief Justice that this is to be deduced from the position which has been assigned to Sec. 273 in a chapter headed “Of inquiries and trials before the subordinate Magistrates.” The arrangement by chapters, containing groups of provisions having reference to the same subject, is a feature of the Code of which, in my opinion, we are bound to take cognisance, inasmuch as it is frequently recognised in the Code itself, as, for instance, in the two sections immediately preceding that under consideration (Secs. 271 and 272), and also because this principle of the Code is otherwise clearly to be inferred from several of its provisions, as for instance from those which are specially made applicable to trials under Ch. xiv. and xv.; certain of the provisions laid down in another chapter respecting the issuing of process, the examination of witnesses, and other matters, of which examples will be

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found in Secs. 249, 250, 254, 256, 264, and 268 ; the separation and distinction of chapters being one of such fundamental import and significance, as may be gleaned from these and other parts of the Code, that it was considered necessary to re-enact for the purpose of one chapter provisions which had already been laid down in another. In the recognition of this principle, too, the Court has held that a particular provision, as Sec. 270, which is found in one chapter (xv.), is not applicable to cases falling under another chapter (Ch. xiv.), although there is nothing in the express language of the section which necessitates such a restriction. I conclude, therefore, that the division into chapters is an organic feature of the Code, and that all the sections falling under Ch. xvi., and among them Sec. 273, must be interpreted as having reference exclusively to "the Subordinate Magistrates," that is, the two classes so designated in Sec. 22 of the Code, and there distinguished from Magistrates authorised to exercise full powers.

If this argument needed support, indications leading towards the same conclusion might be noticed in the succession of the group of sections which form Ch. xvi. to those which constitute Ch. xii., xiv., and xv., and also in the circumstance that while all the provisions which are found in Ch. xvi. are applicable to those classes of Magistrates which the Code designates as "Subordinate Magistrates," the provisions contained in one of these sections (Sec. 277) do not apply to any others.

To look, however, beyond the evidence derivable from the chapter, I am of opinion that the term "subordinate" with reference to a Magistrate is not shown to be used in two different senses in the Code. In the sections before referred to, in which the different grades of Magistrates are enumerated, and their powers defined, one division is expressly designated "Subordinate Magistrates," and these are arranged under two classes. I do not see anything in any part of the Code to lead me to the inference that the term "subordinate" is anywhere intended to include any other Magistrates than these two classes. If it is necessary to go beyond the

designation, these two classes alone are subordinate to the Magistrate of the District, by virtue of his power to hear appeals from their decision; while the Magistrates with full powers are subordinate in this respect to the Sessions Court only, and so far on a par with the Magistrate of the District, whose decisions are appealable to the same authority. Subordination, as contemplated in the Code, can be argued, it seems to me, only from the use of the designation, or from the relation towards the Court of appeal. The Full Power Magistrate, instead of being subordinate to the Magistrate of the District, is classed with him in Sec. 22 as his equal in penal jurisdiction, and no subordination of the former to the latter is stated in any part of the Code. The Magistrate of the District is indeed defined as the "Chief Officer charged with the executive administration of a District in criminal matters," and this he becomes by appointment by Government, all other officers being in this respect necessarily inferior to him; but inferiority does not involve subordination, and the Magistrate of the District, though superior, cannot be held to be vested by the Code with any particular powers over other Magistrates, unless they are expressly given to him.

Language similar to that in Sec. 273 is used in Sec. 434 of the Code, where it is provided that "it shall be at all times lawful for a Court of Session and for a Magistrate to call for and examine the record of any Court immediately subordinate to such Court or Magistrate, for the purpose of satisfying themselves as to the legality of any sentence or order passed, and as to regularity of the proceeding of such subordinate Court;" and it is then enacted that "if the Court of Session or Magistrate shall be of opinion that the sentence or order is contrary to law, the Court or Magistrate shall refer the proceedings for the orders of the Sudder Court." But if the Magistrate with full powers, who is now held to be immediately subordinate to the Court of Session, be held to be subordinate to the Magistrate of the District also, the result of this double subordination in connection with this section will be that, when the Magistrate

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sees cause to call for any record of a Magistrate F. P. to consider any apparent illegality, he may find that the case has been already sent to the Sessions Court, or the Sessions Court similarly may find that a case which it requires has been sent to the High Court by the Magistrate; or a Magistrate F. P. may on the same day receive precepts respecting the same case from the Court of Session and the Magistrate of the District, and, being held to be subordinate to both, be in doubt which to obey. I cannot read Sec. 434 as authorising an order by the High Court, that the Magistrate, who is there empowered to refer certain cases to the High Court, should, in order to avoid some of the inconvenient results above pointed out, submit them through the Sessions Court.

The learned counsel has argued that the Magistrate of a District may be held to have power in his executive capacity to refer a case to any other Magistrate, and that he may in the same capacity withdraw a case from a Magistrate with full powers, under Sec. 36 of the Code, though the said Magistrates are not judicially subordinate to him. But the power under which the Magistrate of the District may at any stage of a trial take a case from the Magistrate who is trying it, appears to me to be one which cannot rightly be described as executive. A circular of the High Court of Calcutta has also been relied on as stating this view, but no ruling of that Court, or of the Madras High Court, is quoted in opposition to the consistent rulings of this Court that Magistrates with full powers are not subordinate to the Magistrate of the District.

The procedure prevailing before the new Code came into operation has been adverted to, but does not give any support to the view which is suggested. The Zillá Magistrate had power, indeed, to refer cases to all other Magistrates in the Zillá, but none of these Magistrates could ordinarily pass a sentence of more than three months' imprisonment without his sanction, and if the full powers of a Magistrate were specially granted to any officer, it was expressly enacted that his decisions remained open to the

revision of the Magistrate, who had power to mitigate or annul. The Joint Magistrate of the Regulations was an officer much more analogous to the present Magistrate F. P., and Government have recognised this by substituting for the former a Magistrate with full powers specially authorised to hear appeals. But the Zillá Magistrate had no jurisdiction over the Joint Magistrate.

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I notice that in the draft Acts—both that for the Bombay Presidency, published in 1857, and the general one, published in 1859—the distinction between the Magistrate and subordinate courts was in some respects even more marked. In both the Bills, in the provision which occupied the place of our present Sec. 434, ‘officers exercising the powers of a Magistrate’ are mentioned as empowered equally with the Magistrate [of the District] to call for and examine the records of any court immediately subordinate to them. The executive power which I understand the Magistrate of the District to possess as the chief executive officer in criminal matters, may be illustrated by his power under Government to allot to the other Magistrates the portions of his district of which they are to take charge, the submission of all returns and correspondence through him, functions in connection with the police, and the like.

It is not necessary here to resort to the *argumentum ab inconvenienti*, or I might remark that while it might be very proper that a Magistrate of a District should have the power, possessed by no other Magistrate, to refer some of the trifling cases that may frequently come before him to one or other of the many stationary Subordinate Magistrates in his district, some of whom will always be within a short distance from him, the accused person or persons and the witnesses in the few more serious cases would ordinarily be subjected to great hardship, if the Magistrate of the District, instead of trying such cases himself, as he may reasonably be expected to do, were to send them over his district, often for many miles, to be disposed of by one of the few and widely-scattered F. P. Magistrates, who are, moreover, usually on the move,

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and whom it might be further necessary for all the parties to follow about from place to place.

TUCKER, J. :—I concur in³ the judgment which has been pronounced by the Chief Justice, and in the reasons which he has given for the opinion which he has expressed.

As neither Mr. Justice Warden nor Mr. Justice Gibbs is able to attend the Court to-day, they both have asked me to read their judgments, which they have handed over to me for that purpose, and I proceed to comply with their request.

WARDEN, J. :—The Chief Justice and the Honorable Mr. Justice Newton have so fully discussed the legal grounds on which the decision we have come to is based, that it is quite needless for me to say anything more on the subject; I will, therefore, merely allude to the question of convenience, which really is the sole reason why the Magistrate seeks to make out that he has the authority to refer criminal cases for trial to a Magistrate F. P. For my part I cannot see that he has anything to go upon; for the cases which in the course of the year come before any District Magistrate, and which are beyond the jurisdiction of a Subordinate Magistrate, are so few, that he can easily, without taxing himself too much, and without neglecting his other duties (magisterial and revenue), dispose of the cases himself; the little extra labour which their disposal would entail on him is literally nothing in comparison with the inconvenience, fatigue, and loss of time which witnesses and accused persons suffer by a case being referred by the District Magistrate to the Magistrate F. P. The loss of valuable time to the agriculturists at certain seasons is apparent to every one. There are usually not more than two or three Magistrates with full powers in a district, each of whom has a very large extent of country under his charge, and is so constantly on the move, that even the District Magistrate frequently does not know where he is to be found, and must have recourse to conjecture as to his probable whereabouts. The witnesses and the accused in the referred cases have, therefore, regularly to track him up, and, when found, have probably to travel with him for miles until he is able to dispose of the

case. What I have described occurs also in cases which are sent direct by the police to the Magistrate with full powers. This must, however, be borne with until the number of our Magistrates with full powers is greatly increased, and only a small portion of a district is allotted to each; but this is no reason why the mischief should be aggravated by referring cases to a Magistrate with full powers which can be easily disposed of by the Magistrate of the District. I will, in conclusion, just mention, in support of what I have stated, a matter that occurred only a few days ago. The Magistrate of a District, on being called on to explain the delay that took place in forwarding to the Session Court the proceedings of a Magistrate with full powers, against whose decision an appeal had been preferred, represented that the delay was owing to the Magistrate with full powers being on the move, and the writ of the Sessions Court consequently taking some days to reach him. The difficulties which I have above mentioned do not arise in cases referred by the District Magistrate to the Subordinate Magistrates, for they are thickly scattered over the country, and are for the most part stationary.

GIBBS, J. :—As I shall not be in court when judgment is given in this case, I beg to record my entire concurrence in the judgment of the learned Chief Justice, which I have read, as also in that of my brother Newton. I think that sufficient has been said on the construction of the Criminal Code, of Procedure, and that any further remarks of mine on that point would be mere surplusage. But I wish to make a few observations on the circular of the Calcutta High Court, and also on the practice, which the learned counsel who has so ably argued the case wishes us to uphold.

With regard to the former, it seems to me to fail in the object it is intended to carry out, if that be anything more than to give the Magistrate of the District power to call for and examine cases tried by Full Power Magistrates for other than judicial purposes. The circular makes the Full Power Magistrate subordinate to the Magistrate of the District, but not entirely or in any way judicially, as it appears to me. The subordination is of a most limited nature; the last

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paragraph distinctly lays down that the Magistrate of the District is not competent to comment on the proceedings, or to point out errors in law, or other irregularities. It seems to me, therefore, that while declaring the Full Power Magistrate to be subordinate, it does not contemplate any such subordination as the counsel for the applicant would wish us to determine.

I quite agree that the Magistrate of the District, as being "the Chief Officer charged with the executive administration of a District in criminal matters," which of course includes the police, should be able to ask any Magistrate exercising full powers within his district for such cases as may be required by him for any administrative purpose, *i.e.*, to check or assist the police in the execution of their duties; but further than this I cannot see that he should be allowed to interfere.

I notice in the proposed Bill for amending the Criminal Code of Procedure, published in the *Government Gazette* of the 2nd of May last, a provision has been made in the following words (*vide* Sec. 437, corresponding with Sec. 434 of the present Code) :—"The local Government shall decide what Courts are subordinate to the Courts of Session, and what Courts are subordinate to the Magistrates, for the purposes of this section."

This is intended to enable Government to place any Full Power Magistrate under the Magistrate of the District; but I am not sure that this will be beneficial. The appeal will still lie to the Session Judge, and if while this is the case the Magistrate of the District can call for cases, for the purpose of handing them up for review, the confusion alluded to by my brother Newton will only be confirmed. If this proposed amendment be only for administrative purposes, the power should be more clearly described, and the Magistrate of the District should not be allowed to call for the case until the period for appeal has elapsed.

But in a case like the present, even were the meaning of the Code less clear, and we were obliged to notice the *argumentum ab inconvenienti*, I cannot help expressing my opinion that such a ruling as Mr. White seeks for would

not be desirable. In no district have Government appointed more than five Full Power Magistrates—in some there are only three; and I have noticed, when reviewing the monthly Criminal Returns, that very few Magistrates of the District try a single case if they can avoid it. I feel sure that if the ruling asked for were given, the Magistrates of Districts would be able to get rid of every case, and, considering the distances at which the camps of the Full Power Magistrates generally are from that of the Magistrate of the District, such power would only result in much additional trouble and fatigue to all concerned, prisoners, witnesses, and police. The police send a case up to the Magistrate of the District; this will often involve a journey of some few miles: if then this officer, instead of at once disposing of the case, refers it for trial to the nearest Full Power Magistrate, existing circumstances will ensure thereby many miles' additional travel to the parties concerned, and form an additional reason for prosecutors refraining from putting the law into force. I think, therefore, that, not only on legal grounds, but also on the ground of convenience, the ruling applied for should be refused; and the order of the District Magistrate of Súrat cancelled.

Order annulled.

REG. V. THAKU' bin IRA'

Sept. 10.

*Maintenance—Judicial Proceeding—Appeal—Crim. Proc. Code,
Secs. 316, 404, and 409.*

An order of maintenance, under Sec. 316 of the Criminal Procedure Code, is a "judicial proceeding of a Criminal Court" within the meaning of Sec. 404 of that Code, but no appeal lies against such order under Sec. 409.

ONE Sankú, wife of Petu, the son of the petitioner, Thakú, having petitioned for maintenance, the Acting Magistrate of the District of Kárwár, J. Elphinston, ordered, under Sec. 316 of the Code of Criminal Procedure, an allowance of eighteen rupees per annum to be made to her by her husband and father-in-law jointly. No payment was made as