

the amount of work which he had had done, which I no'ed 'admissible,' and sent to the Municipal Secretary." Without therefore, deciding that a person on whose signature public money is paid may not be said to "expend it," a view I am personally prepared to hold, it seems to us in the present case, upon the evidence of Jones, corroborated as it has been by Mr. Hope, that Jones did in fact receive municipal money, and pay the same to the contractors; and we are of opinion that this is sufficient to bring him within the 10th clause of Sec. 21 of the Indian Penal Code. We see therefore no ground to exercise the extraordinary powers of the Court in this case.

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Reg.
v.
Nantamram
Uttamram.

Petition rejected.

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Petitioner.

Subordinate Magistrate of Second Class-Entertaining case on report of Police Officer-Crim. Proc. Code, Sec. 66 A-Transfer of case from one Magistrate's Court to another.

Oct. 6.

A Subordinate Magistrate, 2nd Class, who is not specially vested with powers under Sec 66 A of the amended Code of Criminal Procedure, has no jurisdiction to try a case on the report of a Police Officer, or on a complaint directly preferred to him.

The High Court will not, except on very strong and very clear grounds, transfer a case from one Magistrate's Court to that of another Magistrate.

This was an application for the transfer of a case from the Magistrate's Court in which it was pending to another Court.

Macpherson (with him Shantaram Narayan) in support of the application.

Dhirajlal Mathuradas contra.

Cur. ad. vult.

The facts appear from the judgment of the Court (Gibbs and Melvill, JJ.) delivered by.

Gibbs, J.:—In this case the petitioner applies for the transfer of a criminal case now pending against him in the Court of the Subordinate Magistrate 2nd Class, of Wai, to some other Court in the district of Satara. The petitioner

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filed an affidavit, and, on grounds shown by his counsel, the record and proceedings were called for by another Division Bench of this Court, and the matter now comes before us for final disposal. In the affidavit it is stated that a courtesan, with whom the applicant had been acquainted for ten or twelve years, had died of cholera at Wai, and left a will appointing him executor, and disposing of her property in trust for her mother, and for religious and charitable purposes; that one Krishna Joshi Panchnadikar complained to the Subordinate Magistrate that the said courtesan had died heirless, and that the petitioner was appropriating her property; that during the investigation of this complaint the Subordinate Magistrate, in consequence of a grudge against the petitioner, instigated, in open Court, the mother and brother of the deceased courtesan to deny the will, and institute criminal proceedings against him for trespassing on the property; that, in pursuance of this instigation, a complaint was made before the Chief Constable who being of opinion that no offence had been committed, made a report to that effect of the Subordinate Magistrate. The petitioner further alleged that the Subordinate Magistrate, not satisfied with this, took a complaint himself, and instituting criminal proceedings against the petitioner and his servants, who were stationed to protect the property, conducted the inquiry in a manner which indicated that he had made up his mind to convict. Six applications were made to the Magistrate of the District for a transfer of the case, but it was stated that no attention was paid to them.

Upon this affidavit the High Court sent for the proceedings, and directed the Magistrate of the District and the Subordinate Magistrate 2nd Class, to report on the allegation made by the petitioner. On receipt of the writ the District Magistrate deputed Mr. Trevor, the Magistrate in charge of taluka Wai, to proceed there, and make a personal inquiry into the matter. This was done, and Mr. Trevor has sent in a very lengthy and clear report, which has been forwarded to us by the District Magistrate with his own observations.

Now, the reasons assigned by the petitioner for asking this Court to give the order for transfer, as gathered from his petition, are, that the Magistrate instigated the complaint; that he "conducted himself in a manner that shows that he had made up his mind to disgrace petitioner;" that he placed an armed guard over the accused; that he browbeat the witnesses; and, finally, that "petitioner is apprehensive that he will not have justice done him if the case remains in the hands of the said Subordinate Magistrate."

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From the proceedings it appears that the inquiry has been completed, and a finding recorded against two of the accused; and that the reason why it has not been completed against the petitioner is that he absented himself on a medical certificate as being unable to be present in Court at Wai, although he appears to have been well enough to travel to Bombay, and apply to this Court for a transfer of the case.

This Court will always require some very strong grounds for interfering in the manner sought for by the petitioner. To move a case from one Magistrate to another on grounds personal to such Magistrate is tantamount to a severe censure on such officer, and the very clearest grounds must exist ere the Court will interfere.

We have to see whether any such grounds have been established by the petitioner in this case. Mr. Trevor, the P. P. Magistrate in charge of the taluka of Wai, has made a very careful and full report, and although, from passages which occur from time to time, clearly not trying in any way to screen his subordinate, he concludes as follows:—

"The Subordinate Magistrate is, as you are aware, a man of somewhat brusque manner and independent character; and his disposition to resent rudely anything which seems to him like officious interference has led him into quarrels with several influential people, more especially with the proprietors of the *Maharashtra Mitra* and *Indu Prakash*. The latter reside at Wai; and one of them, I may observe, was security for the petitioner at his trial. Under these circumstances it is extremely likely that the Subordinate Magis-

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trate may have been led into vindicating the dignity of his Court and his own independence and impartiality somewhat more ostentatiously than was necessary; and from all I heard at Wai I am inclined to believe that this may have been the case, even to the extent of setting an armed guard, which, as a rule, is only done in trials for offences accompanied by violence, and not always then.

"The proceedings were, however, conducted with too much publicity, and the probability that they would be brought to the notice of higher authority became apparent at too early a stage, to make it at all likely that the petitioner had any reason to fear wilful or substantial injustice." Now, this shows that the Subordinate Magistrate is an active and energetic officer, perhaps rather over-zealous, but nothing more.

The District Magistrate, in forwarding this report, gives as his own opinion of the officer as follows:—"I have known the Subordinate Magistrate for the last four years and a-half, and I have full reliance on his integrity and uprightness, though he is perhaps sometimes a little hasty and injudicious."

Taking these reports in the most unfavourable light, they would only, perhaps, raise the question whether the Subordinate Magistrate was an officer too hasty and injudicious to exercise magisterial powers at all (a meaning we in no way intend placing upon them); but they in no way prove the petitioner's allegations. We have had frequent opportunity of knowing officially that party spirit runs high in the town of Wai, and that upright and energetic officers, whether exercising civil or criminal functions are apt to be petitioned against; but after the very full inquiry which has been made in this case, we feel sure that we should not be justified in ordering a transfer of the case as prayed for, on the grounds urged by the petitioner.

We think, however, there is a fatal objection, which, was not raised at the bar, to the trial of the case by the Subordinate Magistrate 2nd Class, a matter which has

been referred to the Court by several Magistrates, and which is one arising from the late Act amending the Criminal Procedure Code, Sec. 66 A, of which is as follows:—"The Local Government may, by notification in the official *Gazette*, define what Magistrates or Subordinate Magistrates shall entertain cases either on complaint preferred directly to themselves or on the report of a Police Officer; and such Magistrates or Subordinate Magistrates shall be competent to entertain such cases, if the offence charged is triable by them, or if they shall have been empowered under Section 38." Now, we find that Government have issued a proclamation under this section in the *Government Gazette* of 15th July 1869, by which they only extend the powers to Magistrates F. P. and 1st Class Subordinate Magistrates, and do not include 2nd Class Subordinate Magistrates; and, further, to show they did not intend to include these latter officers, the second para of the notification informs Magistrates of Districts that, should they think it necessary to confer these powers on any 2nd Class Subordinate Magistrate, they are specially to apply to Government.

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Sec. 66 A came into operation on the 1st of June last, prior to the commencement of these proceedings; and therefore the 2nd Class Subordinate Magistrate had no power of his own motion to inquire into the matter; and as there is nothing to show that the complaint was referred to him by the District Magistrate, it follows that the proceedings are illegal. We must therefore annul them, and leave the Police Officer's report to be dealt with by the Magistrate having jurisdiction.

Proceedings annulled.

NOTE—On the subject of the powers of Subordinate Magistrates to hear cases on complaint preferred directly or on the report of a Police Officer, see, further, a "Notification" published in the "*Government Gazette*" of 11th November 1869.—Ed.