

## REVISIONAL CRIMINAL

Before Bhandari, C. J., and Chopra, J.

JAGIR SINGH AND BALBIR SINGH,—*Petitioners*

*versus*

THE STATE.—*Respondent*

**Criminal Revision No. 529 of 1957**

*Code of Criminal Procedure (Act V of 1898)—Section 30—Amendment of, by Act XXVI of 1955—Effect of—Section 28 and appropriate entry in the eighth column of second schedule of the Code—Powers of Magistrates, 1st Class—Whether abrogated by the Amendment—Sections 28 and 30—Whether repugnant to each other—Respective scope of each section.*

1958

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April, 30th

*Held*, that the only effect of the amendment of section 30 of the Code of Criminal Procedure by Act XXVI of 1955, is that although it is still open to a Magistrate of the First Class and to a Court of Sessions to continue to try offences triable by them as in the past, it is not within the competence of a section 30 Magistrate now to deal with a case punishable with death or with imprisonment of life or a term exceeding seven years.

*Held*, that section 30 of the Code of Criminal Procedure as amended by Act XXVI of 1955, does not limit or abridge the powers of a Magistrate of the First Class as conferred by section 28 and the appropriate entry in the eighth column of the second schedule. The only change that has been brought about by the amendment is that if the Magistrate considers that severer punishment than two years is to be awarded in any of the cases triable by him, he should commit the case to the Court of Sessions and should not deal with the case himself.

*Held further*, that sections 28 and 30 of the Code of Criminal Procedure are not repugnant to each other. They deal with separate matters and can stand together. Section 28 embodies a general provision in regard to powers of a Court while section 30 contains a special provision in regard to powers of section 30 Magistrates.

*Hari Singh v. State* (1), *Budhan Choudhry and others v. State of Bihar* (2), relied upon.

*Case referred by Hon'ble Mr. Justice S. B. Kapoor on 6th December, 1957, for constitution of a larger Bench for decision of a legal point involved in the case and later on decided by a Division Bench consisting of Hon'ble Mr. Chief Justice A. N. Bhandari and Hon'ble Mr. Justice Chopra on 30th April, 1958.*

*Petition under section 439, Criminal Procedure Code for revision of the order of Shri Tirath Dass Sehgal, Sessions Judge, Gurdaspur, dated 24th April, 1957, affirming that of Shri Jaspal Singh, Additional District Magistrate, exercising enhanced powers under section 30, Criminal Procedure*

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(1) 1958 P.L.R. 203.

(2) A.I.R. 1955 S.C. 191.

*Code, Gurdaspur, dated 14th March, 1957, convicting the petitioners.*

M. R. MAHAJAN, for Appellants.

SURINDER SINGH for Advocate-General, for Respondent

### ORDER

CAPOOR, J.—This is a petition for revision directed against the order of the learned Sessions Judge, Gurdaspur, whereby the appeals of Balbir Singh and Jagir Singh petitioners against their convictions under section 326, Indian Penal Code, and sentences of two years' rigorous imprisonment each were dismissed, and the only contention urged in revision on behalf of the petitioners is that, in view of the amendment to section 30 of the Criminal Procedure Code, 1898 (hereinafter referred to as the Code) by the Criminal Procedure (Amendment) Act 26 of 1955, the trying magistrate who was specially empowered under section 30 of the Code had no longer any jurisdiction to try a case under section 326, Indian Penal Code.

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Before the amendment, section 30 of the Code ran as follows :—

“In Assam, Madhya Pradesh, Punjab, Oudh, Madhya Bharat, Hyderabad, Mysore, Patiala and East Punjab States Union and Rajasthan, in all Part C States, and in those parts of the other States in which there are Deputy Commissioners or Assistant Commissioners the State Government may, notwithstanding anything contained in section 28 or section 29, invest the District Magistrate or any Magistrate of the first class, with power to try as a Magistrate all offences not punishable with death.”

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By virtue of the amendment, the section now reads as follows :—

“Notwithstanding anything contained in section 28 or section 29, the State Government may, in consultation with the High Court, invest any District Magistrate, Presidency Magistrate or Magistrate of the first class with power to try as a Magistrate all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven years :

Provided that no District Magistrate, Presidency Magistrate or Magistrate of the first class shall be invested with such powers unless he has, for not less than ten years, exercised as a Magistrate of the first class.

*powers not inferior to those of a Magistrate of the first class.*

The difficulty arises on account of the addition of the words “or with imprisonment for a term exceeding seven years” in the section as amended. The argument on behalf of the petitioners is that a Magistrate specially empowered under section 30 of the Code is by virtue of the amendment disqualified from trying any offence which is punishable for a term exceeding seven years, even though such offence is shown in column 8 of the Second Schedule of the Code to be triable by a Magistrate of the first class, and since a Magistrate specially empowered under section 30 is so disqualified a Magistrate of the first class, whose powers are inferior to those of a Magistrate specially empowered under section 30, would also by analogy be disqualified from trying such cases and to that extent the Second Schedule to the Code must be deemed to have been abrogated. As an offence

under section 326, Indian Penal Code, which is punishable with imprisonment for life or imprisonment of either description for ten years and is triable by the Court of Session, Presidency Magistrate or Magistrate of the first class, cannot now be tried by a Magistrate specially empowered under section 30 of the Code who cannot now try an offence punishable with imprisonment for a term exceeding seven years, by analogy that offence would also not be triable by a Magistrate of the first class.

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Whether any offence is triable according to the provisions of the Second Schedule by the Court of Session or by a Magistrate it is not really dependent upon the maximum punishment provided for the offence, but upon the nature thereof. Thus, the offence of causing miscarriage under section 312, Indian Penal Code, is triable only by the Court of Session though the maximum period of imprisonment provided is three years. Again, defamation of certain high personages though punishable only with simple imprisonment for two years, is triable only by the Court of Session,—vide the entry against item (a) of section 500, Indian Penal Code, in the Schedule. Accordingly; the argument by way of analogy advanced on behalf of the petitioners does not really appear to be sound. According to the Second Schedule, lurking house-trespass or house-breaking by night in order to the commission of theft which is punishable with imprisonment of either description for 14 years is triable not only by the Court of Session, Presidency Magistrate or Magistrate of the first class but also by a Magistrate of the second class, and it does not appeal to reason that the powers conferred by the Code on Magistrates of the first or second class to try certain offences should be taken away not by amendments of the Schedule

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but in indirect manner by an amendment of section 30 of the Code. In fact, it is found that even by Act 26 of 1955 an amendment has been made in the entry in the Schedule under section 500, Indian Penal Code, in order to take away the powers of a Magistrate to try cases of defamation against certain high personages. It cannot, thus, be presumed that the legislature would deprive Magistrates of their existing powers under sections 28 and 29 of the Code by the roundabout method of amending section 30.

It has been argued on behalf of the petitioners that such an intention should be presumed, because it is the policy of the legislature that comparatively serious offences should be tried by the Sessions Court rather than by Magistrates. A comparison of the provisions of section 30 as it stood before the amendment with the existing section would show that while previously enhanced powers under section 30 could be conferred on Magistrates in certain States and territories only, there is no such restriction now. The supposed distrust of Magistrates by the legislature cannot be presumed nor can it influence the Courts in interpreting the statute.

It was next contended on behalf of the petitioners that sections 28, 29 and 30 of the Code are inter-linked and should be interpreted as a whole and that if the first class Magistrates are to retain all their powers as mentioned in the Schedule, section 30 would be pointless. This argument might have some force if there were no offences under the Indian Penal Code which were punishable with imprisonment up to seven years and also exclusively triable by the Court of Session. There are, however, certain offences of this category, e.g., an offence under section 231 Indian Penal Code.

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On behalf of the petitioners reference was made to *Budhan Choudhry and others v. State of Bihar* (1), in which it was observed that the provisions of section 28 and the Second Schedule must give way to the provisions of section 30. This is so because section 30 before as well as after the amendment effected by Act 26 of 1955 was to take effect notwithstanding anything contained in section 28 or 29 of the Code. As a matter of fact, certain observations made by their Lordships of the Supreme Court in that case go against the position taken up on behalf of the petitioners because it was held that the effect of the exercise of authority by the State Government under section 30 was to bring into being an additional Court in which all offences not punishable with death became triable, i.e., to add in the eighth column of the Second Schedule the Magistrate so empowered as a Court before whom all offences not punishable with death would also be triable. In other words, section 30 is an enabling section and not to be interpreted as restricting the powers of the Courts under sections 28 and 29 of the Code.

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The learned counsel for the petitioners directed my attention to two recent Single Bench decisions of this Court, viz., *Karam Singh etc. v. The State* (2), decided on the 11th of October, 1957, and *Om Parkash v. The State* (3), decided on the 5th of November, 1957. In the former it was held that an offence under section 326, Indian Penal Code, and, in the latter, that an offence under section 409, Indian Penal Code, committed after Act 26 of 1955 had come into force, cannot now be tried by a Magistrate of the first class even though he be invested with enhanced powers under section 30 of the Code of Criminal Procedure. It appears

(1) A.I.R. 1955 S.C. 1951 at p. 104. — 191

(2) Cr. R. 226 of 1957.

(3) Cr. Misc. No. 356 of 1957.

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from the judgments in both the cases that the counsel representing the State conceded that the offences were not so triable, but in this case the counsel representing the State has strenuously contested the point. With due respect to the learned Judges who decided these cases. I am of the view that the above amendment to section 30 of the Code does not operate so as to take away the powers of Magistrates of the first or the second class to try certain offences according to the entries in the Second Schedule. The question involved is, however, one of considerable importance and it appears desirable that it should be decided by a larger Bench. I would accordingly direct that the papers be laid before the Honourable the Chief Justice for the constitution of a larger Bench.

#### JUDGMENT

Bhandari, C. J.

BHANDARI, C.J.—This petition raises the question whether the Criminal Procedure Code Amendment Act, 1955, abrogates the powers conferred on Magistrates of the First and Second Class to try certain offences according to the entries in the Second Schedule of the Code of Criminal Procedure.

A Magistrate of the First Class, exercising enhanced powers under section 30 of the Code of Criminal Procedure, convicted the two petitioners in this case under section 326 of the Penal Code and sentenced them to rigorous imprisonment for a period of two years each, and the sentence of the trial Court was upheld by the learned Sessions Judge in appeal. When the case came up for consideration before a learned Single Judge of this Court a question arose whether it is within the competence of a Magistrate of the First Class, exercising enhanced powers under section 30 of the



Code of Criminal Procedure to try an offence punishable with imprisonment for a period exceeding seven years. As the question involved is of some importance, the learned Single Judge has expressed the view that it should be placed before a larger Bench.

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Chapter III of the Code of Criminal Procedure which relates to powers of courts contains the number of sections which are relevant to the decision of the case. Section 28 is in the following terms :—

“28. Subject to the other provisions of this Code any offence under the Indian Penal Code may be tried—

- (a) by the High Court, or
- (b) by the Court of Sessions, or
- (c) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.”

Section 29 runs as follows :—

“29(1) Subject to the other provisions of this Code any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

- (2) When no Court is so mentioned, it may be tried by the High Court, or subject as aforesaid by any Court constituted under this Code by which such offence is shown in ~~the~~ the eighth column of the second schedule to be triable.”

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30. In Assam, Madhya Pradesh, Punjab, Oudh, Madhya Bharat, Hyderabad, Mysore, Patiala and East Punjab States Union and Rajasthan, in all Part C States and in those parts of the other States in which there are Deputy Commissioners or Assistant Commissioners the State Government may, notwithstanding anything contained in section 28 or section 29 invest the District Magistrate or any Magistrate of the first class, with power to try as a Magistrate all offences not punishable with death”.

The entry against section 326 in the Second Schedule to the Code of Criminal Procedure is as follows.

1	2	3	4	5	6	7	8
Section	Offence	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Code.	By what Court triable
326	Voluntarily causing hurt by dangerous weapons or means.	May arrest with out warrant	Summons.	Not bailable.	Not compoundable.	Imprisonment for life or imprisonment of either description for 10 years and the 1st fine.	Court of Session Presidency Magistrate or Magistrate of the 1st class.

The Code of Criminal Procedure (Amendment) Act, 1955, has replaced section 30 by a new section which is in the following terms :—

- “30. Notwithstanding anything contained in section 28 or section 29, the State

Government may, in consultation with the High Court, invest any District Magistrate, Presidency Magistrate or Magistrate of the first class with power to try as a Magistrate all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven years:

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Provided that no District Magistrate, Presidency Magistrate or Magistrate of the first class shall be invested with such powers unless he has, for not less than ten years, exercised as a Magistrate powers not inferior to those of a Magistrate of the first class."

The learned counsel for the petitioners contends that although a Magistrate of the first class exercising enhanced powers under section 30 of the Code of Criminal Procedure is at liberty to try all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven years, he is unable to try an offence under section 326 of the Penal Code which is punishable with imprisonment for life or imprisonment of either description for ten years and fine. If the legislature deliberately deprives a Magistrate of the power of trying an offence under section 30, it is argued, it could never have intended that a Magistrate of the first class, who is inferior in status to a section 30 Magistrate, should be qualified to try this offence. It is accordingly contented that the amendment of section 30 has the effect of abrogating certain entries in the Second Schedule.

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This contention does undoubtedly have the support of two unreported decisions of this Court viz., Cr. Rev : No. 226 of 1957, decided on the 11th

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October, 1957, and Cr. Miscellaneous No. 356 of 1957, decided on the 5th November, 1957. In the earlier case the counsel for the parties agreed that an offence under section 326 of the Penal Code is not triable by a Magistrate of the First Class. In the later case they agreed that an offence under section 409 is not triable by him. These decisions were based on the agreement of parties and not on the construction of the relevant provisions of the statute and furnish no guide for the decision of the controversy which has arisen in the present case.

Before the Code of Criminal Procedure was amended in the year 1955, a case under section 326 of the Penal Code could be sent to a First Class Magistrate if the sentence was likely to be less than two years, to a Section 30 Magistrate if the sentence was likely to exceed two years, and to a Sessions Court if the sentence was likely to exceed seven years. The only effect of the amendment is that although it is still open to a Magistrate of the First Class and to a Court of Session to continue to try offences under section 326 of the Penal Code as in the past, it is not within the competence of a Section 30 Magistrate to deal with a case under section 326 I.P.C., for section 30 as amended specifically declares that a Magistrate who is invested with enhanced powers under the provisions of this Section can try only offences not punishable with death or with imprisonment for life or for a term exceeding seven years. *Hari Singh v. State* (1). If a provision of law authorises a Magistrate of the First Class to exercise a particular power and if that provision of law remains unaltered, unamended and unmodified, it is difficult to hold that that power has been taken away by virtue merely of the fact that the Legislature in its wisdom has thought fit to modify another provision of law. Nothing contained in section 30 can be said to

(1) 1958 P.L.R. 203.

limit or abridge the powers of a Magistrate of the First Class as conferred by section 28 and the appropriate entry in the eighth column of the Second Schedule. Section 28 embodies a general provision in regard to powers of a court while section 30 contains a special provision in regard to powers of Section 30 Magistrates. These two sections are not repugnant to each other. They deal with separate matters and can stand together. Section 30 does not abrogate or override the provisions of section 28 and the Second Schedule and does not declare that a Section 30 Magistrate alone is capable of dealing with all offences not punishable with imprisonment of less than seven years. It merely creates an additional Court which is capable of dealing with all offences which are not punishable with death, imprisonment for life or with imprisonment for a term not exceeding seven years *Budhan Choudhry and others v. State of Bihar* (1),

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For these reasons I entertain no doubt in my mind that the amendment of section 30 does not in any way take away the powers which vest in a Magistrate of the First Class under section 28 of the Code of Criminal Procedure and in the eighth column of the Second Schedule to the Code to deal with cases under sections 326 and 409 and other sections of the Penal Code. The only change that has been brought about by the amendment of section 30 of the Code of Criminal Procedure is that if the Magistrate considers that a severer punishment than two years is to be awarded in any of these cases he should commit the case to the Court of Sessions and should not deal with the case himself.

Let an appropriate answer be returned to the learned Single Judge.

Chopra, J.—I agree.

K.S.K.

Chopra, J.

(1) A.I.R. 1955 S.C. 191.