

Crown Cases.

REG. V. ARJUN.

1863.

Nov. 4.

Offence made up of Parts—Housebreaking—Theft—Ind. Pen. Code, Secs. 71, 380, and 457.

Sec. 71* of the Penal Code applies to the case of a person charged with "housebreaking" under Sec. 457, and "theft," committed on the same occasion, under Sec. 380 of the Penal Code.

A Magistrate has power to inflict only two years' imprisonment for a single offence.

THE accused was charged with "housebreaking by night in order to the commission of an offence punishable with imprisonment, in having broken by night into the house of complainant in order to commit robbery," contrary to Sec. 457 of the Penal Code, and with "theft, in a dwelling-house, of property valued at Rs. 20 belonging to complainant," contrary to Sec. 380 of the Penal Code.

The prisoner was tried and found guilty by a F. P. Magistrate in the Konkan District, and sentenced on the first count of the charge to two years' rigorous imprisonment, and on the second count to one year's further rigorous imprisonment, under the sections of the Penal Code quoted in the charge.

The case was reviewed by the High Court, consisting of FORBES and WESTROPP, JJ., and the following order passed:—

Imprisonment reduced to two years upon both counts of the charge together, conformably to Sec. 71 of the Penal Code, and inasmuch as the Magistrate has power to inflict no more than two years' imprisonment for a single offence.

Nov. 4.

REG. V. ARJUN.

False Charge—Calendar.

When a prisoner is convicted of having made a false charge of an offence, the nature of the false charge should be stated in the finding and entered in the Calendar.

THE facts of the case appear in the finding of F. R. S. Wylie, the trying Magistrate, which was as follows:—

* "Where any thing which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided."

See on this subject 5 Bom. H. C. Rep., Cr. Ca. 83, and cases there referred to.

"The Court finds the prisoner in this case guilty, on his own confession, of the offence specified in the charge against him, viz., that he has made a false charge of an offence against the complainant, Kálú valad Ghásu, knowing that there were no just or lawful grounds for such charge, and that he has thereby committed an offence punishable under Sec. 211 of the Indian Penal Code, and the Court sentences the prisoner to one year's rigorous imprisonment from this date, also to pay a fine of Rupees 15, or to suffer in default one month's additional rigorous imprisonment."

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The High Court (present FORBES and WESTROPP, JJ.) reviewed the case, and saw no cause to interfere with the finding and sentence recorded against the accused, but at the same time directed the Magistrate to be informed that the nature of the false charge should have been stated in the finding and entered in the Calendar.

REG. v. KUSHA'.

Nov. 4.

*Jurisdiction—Theft in a House—Subordinate Magistrate of 1st Class
—Ind. Pen. Code, Sec. 380.*

A First Class Subordinate Magistrate has no jurisdiction to try a charge of theft in a house under Sec. 380 of the Indian Penal Code.*

THE following reference was made by the Magistrate of the Khándesh District to the High Court:—

"I have the honour to forward a case of theft in a house tried by the First Class Subordinate Magistrate of Errondhur, under Sec. 380, of the Penal Code.

"It will be seen that the Subordinate Magistrate had no jurisdiction under this section. I have, therefore, to request the orders of the Honorable the Judges of the High Court."

The order by the High Court (present FORBES and WESTROPP, JJ.) was—

Conviction and sentence reversed, the trying Magistrate having had no jurisdiction in the case.

The Magistrate may take such further steps in relation to the case as he may think necessary.

Conviction reversed.

* *Sed vide* Act VIII. of 1866, Sec. 1.