

1866.  
REG.  
v.  
VINAYAK  
TRIMBAK  
et al.

The proceedings were referred, for the orders of the High Court, by the Session Judge, F. Lloyd, with the following remarks :—

“On reading over the proceedings, I find the accused Vináyak has been convicted of three distinct offences ; and, under Sec. 46 of the Criminal Procedure Code (*vide* Circular No. 449 of 1866 from the High Court), it was imperative on the Assistant Session Judge to pass a separate sentence on each independent head of the charge.

“I am of opinion, that it is competent to this court to direct the Assistant Session Judge to pass a legal sentence in the case of the said Vináyak, and then to send up the case for confirmation. But the sentence passed against the other prisoner is also, for the same reasons, illegal ; and as the punishment awarded is within the jurisdiction of the Assistant Session Judge, and no appeal has been preferred against it, this court has no power to interfere, as far as the sentence against him is concerned.

“The proper course, therefore, appears to be, to refer the proceedings for the orders of the High Court, under Sec. 434 of the Criminal Procedure Code.”

PER CURIAM (COUCH, C.J., and NEWTON, J.):—The Court notice that it was an irregularity on the part of the Assistant Session Judge not to pass a separate sentence on each independent head of the charge ; but it is not an error or defect in consequence of which this court can reverse or alter the sentence : Sec. 426 of the Criminal Procedure Code.

*No order.*

June 27

REG. V. NA'RA'YAN KRISHNA *et al.*

*Mischief—Theft—Ind. Pen. Code, Secs. 379 and 425.*

*Held* that it was not illegal to convict prisoners of mischief, as well as of theft ; the offences charged being that they had cut down Government trees without leave, and appropriated them.

THE prisoners had cleared a piece of Government land, cutting down and appropriating the trees thereon without permission. They were, therefore, charged and convicted by Shámráy Ganesh, Mahálkari of A'nkola, and

Subordinate Magistrate of the Second Class, of theft under Sec. 379, and of mischief under Sec. 425, of the Penal Code; and sentenced, the first prisoner to one month's imprisonment and to pay a fine of Rs. 40; and the second prisoner to pay a fine of Rs. 10.

The proceedings were forwarded, under Sec. 434 of the Criminal Procedure Code, by M. J. Shaw Stewart, Magistrate of Cánará, with the following remarks:—

“Regarding this case, Mr. Thelwall, Acting First Assistant, writes as follows:—‘The conviction on two charges, on the facts, is, I think, bad in law. Not only does the greater offence include the less; but here the theft could not have been committed without the mischief. To the theft it is necessary to move the property, which in the case of a tree could not be done without cutting it down.’ I concur with Mr. Thelwall in thinking that the accused ought not to have been punished separately on the two charges; and beg to submit, for the consideration of the Judges, whether the sentences should be altered.

“The accused No. 1 did not appeal in proper form or time. His petitions, dated 29th April and 9th June, are annexed. Had I been able to take up the case as an appeal, I think I should probably have reversed the conviction and sentence, on one ground (among others), that the appellant had reason to think the leave would be granted him, in consequence of a promise that I (as Collector) gave him, that it would be granted to him if possible. It was found impossible to give it, on account of requirement for teak plantations; but no harm, but rather the reverse, was done by the petitioner's clearing the land.”

PER CURIAM (COUCH, C. J., and NEWTON, J.):—The Court does not consider the conviction and sentence illegal, as the mischief preceded the theft, which, under Sec. 378, Explanation 1, could not have been committed until the tree had been detached from the ground.

*No order.*

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