

REG. *v.* A'TMA'RA'M WA'MAN BHA'NDA'RKAR.*Indian Post Office Act (No. XVII.) of 1854—Jurisdiction.*

On a reference by a Session Judge in reviewing the monthly magisterial returns:—*Held* that a conviction and sentence recorded by a Magistrate, F. P., under Sec. 50 of the Post Office Act, No. XVII. of 1854 (corresponding with Sec. 48 of the Act of 1866), were illegal; as the Magistrate had no jurisdiction finally to dispose of the case, but was bound to have committed it for trial before the Court of Session.

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THE prisoner was convicted, in the month of February 1866, by Rámchandrá Amrit Dugal, Magistrate, F. P., in the Ratnágiri District, under Sec. 50 of the Indian Post Office Act (No. XVII.) of 1854 (*a*), of the offence of opening a banghy parcel, and fraudulently appropriating the contents thereof, and sentenced to suffer 24 hours' simple imprisonment, and to pay a fine of Rs. 45, or, in default, to suffer rigorous imprisonment for three months.

The record and proceedings were forwarded to the High Court on the 23rd of May by R. H. Pinhey, Session Judge of the Konkan, with the following remarks:—

“The record and proceedings in this case were sent for because, on reviewing the monthly magisterial return, it appeared to me that the sentence passed was wholly inadequate to the serious offence of which the accused had been convicted. A perusal of the record and proceedings confirms the opinion that I arrived at from the monthly return.

“But on reviewing the case it appears to me that the F. P. Magistrate who tried it was not competent finally to dispose of it; but was bound to have committed it for trial before the Court of Session.

(*a*) The corresponding section of the Indian Post Office Act, 1866, is as follows:—“Sec. 48. Whoever being in the employ of the Government in the Post Office Department, shall steal, fraudulently appropriate, or wilfully secrete, destroy, or throw away any letter or other article sent by post, or anything contained in any such letter or other article, or shall mutilate or break open any such letter or other article, or any mail bag or box, with the intention of fraudulently appropriating anything therein contained, shall be punished, on conviction before a Criminal Court, with imprisonment of either description as defined in the Indian Penal Code for a term not exceeding seven years and shall also be liable to fine.”—*Ed.*

“By the (now repealed) Act XVII. of 1854 the offences specified in Secs. 4, 15, 16, 24, 32, 33, 36, 40, 41, 43, 47, 51, and 53 are punishable with fine only. The meaning of the word fine is given in Sec. 66 of the Act. By Sec. 58 of the Act all offences punishable under the Act with fine only are triable by a Magistrate (*i. e.*, District Magistrate) or any person lawfully exercising the powers of a Magistrate (*i. e.*, a Magistrate, F. P., as they are now called) (*b*).

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“The offences specified in Secs. 35, 50, 52, 54, 55, 56, and 57 of Act XVII. of 1854 are by those sections punishable with imprisonment, to which a fine may be added; and the offences specified in Secs. 34 and 65 are punishable with imprisonment or fine. Now all these offences, except those specified in Secs. 34, 35, and 50, are declared in the sections defining the offence to be punishable on conviction before a Magistrate. But no jurisdiction is given to Magistrates to convict persons of the offences specified in Secs. 34, 35, and 50; and the reason of this is apparent, at least as respects offences punishable under Secs. 35 and 50: for these are very grave offences, punishable with seven years' imprisonment, to which a fine may be added.

“I am, therefore, of opinion that the conviction and sentence, recorded by the F. P. Magistrate in this case under Sec. 50 of Act XVII. of 1854, are illegal; the F. P. Magistrate not having jurisdiction to convict and sentence under the said section.

“As this case is not before the Court of Session on appeal, I am of opinion that I am not competent to deal with the case, under Sec. 427 of the Code of Criminal Procedure; because I am not sitting in this case as an Appellate Court, but as a Court of review under Sec. 434 of the Code. Therefore it appears to me that I should refer the case, under Sec. 434 of the Code, for the orders of Her Majesty's High Court of Judicature at Bombay; as that court has full

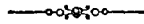
(*b*) The corresponding section of the Ind. P. O. Act, 1866, is as follows:—“Sec. 53. Any person, whether a European British subject or not, who shall be guilty of any offence for which, according to the provisions of this Act, he shall be liable to a fine only, shall be punishable for such offence by any Criminal Court upon a summary conviction.”

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power, under Sec. 404, to order that the case be committed for trial before the Court of Session, or to make any other order that to the said Court may seem right."

The case came on for hearing this day before COUCH, C. J., and NEWTON, J.

PER CURIAM :—The Court annuls the conviction and sentence, as the Magistrate, F. P., had no jurisdiction to convict of an offence punishable under Sec. 50 of Act XVII. of 1854.



REG. v. LAKSHMAN BA'LA'JI'.

*Indian Railway Act (No. XVIII.) of 1854—Jurisdiction.*

*Held* that a conviction by a Magistrate, F. P., under Sec. 26 of the Railway Act, was illegal for want of jurisdiction.

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June 13.  
Referred Case.

THE prisoner was convicted in the month of March 1866 by Lieutenant H. E. Reeves, Magistrate, F. P., in the Tháná District, under Sec. 26 of the Railway Act (No. XVIII.) of 1854, of the offence of wilfully omitting to do what he was legally bound to do; and sentenced to suffer two months' rigorous imprisonment, and to pay a fine of Rs. 50, or, in default, to suffer one month's further rigorous imprisonment.

The record and proceedings were forwarded to the High Court on the 23rd of May by R. H. Pinhey, Session Judge of the Konkan, under Sec. 434 of the Criminal Procedure Code, with the following remarks :—

"The record and proceedings in this case were called for on a review of the Magistrate's monthly return. The conviction and sentence appear to me to be illegal.

"By Sec. 30 of the Railway Act (No. XVIII.) of 1854 all offences punishable with fine only are punishable by a Magistrate (*i. e.*, District Magistrate) or person lawfully exercising the powers of a Magistrate (*i. e.*, a Magistrate with F. P.).

"The offences defined in the latter part of Sec. 27 and in Sec. 28 of the Railway Act are punishable with imprison-