

REG. v. BHA'ISHANKAR HARIRA'M.

"Magistrate of the District"—Appeal—Crim. Proc. Code, Secs. 14 and 412—Proclamation by Government.

Government may by proclamation declare and direct that an Assistant Collector in charge of the Collectorate, during the absence of the Collector, shall be, during that period, "the chief officer charged with the executive administration of the District in Criminal matters;" and such officer being, within the meaning of Sec. 14 of the Crim. Proc. Code, "the Magistrate of the District," may hear appeals from Subordinate Magistrates, under Sec. 412 of the Code.

1866.
November 14.

THIS was a petition under Sec. 404 of the Code of Criminal Procedure.

The prisoner was convicted, by the Subordinate Magistrate of Ankleshvar, under Sec. 406 of the Penal Code, of criminal breach of trust, and sentenced to suffer four months' rigorous imprisonment and to pay a fine of Rs. 200.

Against this conviction an appeal was presented to the Magistrate of the District, which was heard by an Assistant Collector "in charge of the Collectorate" of Súrát, who rejected the appeal.

Shántáram Náráyan for the petitioner.

Dhirajlál Mathurádás, Government Pleader, in support of the conviction.

COUCH, C. J.—In this case there was evidence before the Magistrate that the prisoner was guilty of criminal breach of trust; and consequently the only question now to be decided is, whether the Magistrate in charge of the District had jurisdiction to hear the appeal.

Sec. 412 of the Criminal Procedure Code enacts that "Any person convicted on a trial held by an officer exercising powers less than those of a Magistrate, may appeal to the Magistrate of the District, or other officer exercising the powers of a Magistrate, who shall have been empowered by the Government to hear such appeal." And by Sec. 14—"the words 'Magistrate of the District' shall mean the chief officer charged with the executive administration of a

District in Criminal matters by whatever designation such officer is called.” 1866.
November 14.

On the 21st of May 1863 the following Notification, dated the 20th of May, was published in the *Bombay Government Gazette*:—“ With reference to Sec. 14 of Act XXV. of 1861, His Excellency the Governor in Council is pleased to declare and direct that an Assistant Collector in charge of the Collectorate is and shall be, during that time, the chief officer charged with the executive administration of the District in Criminal matters.”

The Collector and Magistrate of Súrat, Mr. Duff, at the time the appeal was preferred, had left, and Mr. Hogg was in charge of the Collectorate, and was, therefore, by virtue of the proclamation, “ the chief officer charged with the executive administration of the District in Criminal matters,” and within the meaning of the words “ Magistrate of the District.”

There seems no reason why (as has been here contended) Government should in every case *specialy* empower a Magistrate, not being the Magistrate of the District, to hear appeals under Sec. 412 of the Code ; and why it should not be done once for all by proclamation. Public convenience is in favor of this procedure in order that the course of justice may not be impeded, and that convicts may not be sometimes practically denied the right of appeal given them under Sec. 412, by the delay which would be occasioned in obtaining the special sanction of Government in the case of every officer left in charge of the duties of Magistrate of the district.

NEWTON and WARDEN, JJ., concurred.

Petition rejected.