

REG. v. GUNA' bin RAGNA'K and others.

District Magistrate—Illegal Circular—Crim. Proc. Code, Sec. 277.

On a reference by a Session Judge, Circulars issued by a District Magistrate—forbidding all the Subordinate Magistrates from taking up cases, if they think they shall have to act under the provisions of Sec. 277 of the Crim. Proc. Code—annulled, as beyond the competence of the District Magistrate, and based on a misunderstanding of Sec. 277.

THE record and proceedings in this case were referred for the orders of the High Court by R. H. Pinhey, Session Judge of the Konkan, by whom the following judgment was recorded :—

1866.
August 9.
Referred Case.

“Read an extract from the Report of Criminal Cases disposed of by the District Magistrate and Magistrates F. P. in the Ratnágiri District during the month of May 1866, wherein the accused, Guná bin Ragnák and two others, are reported as having been convicted of the offence of theft, and sentenced, under Sec. 379 of the Indian Penal Code and Act VI. of 1864, by James Richard Naylor, Magistrate F. P. in the Ratnágiri District, as follows :—‘Accused Guná (No. 1) and Yesá (No. 2) to suffer two months’ rigorous imprisonment and to pay a fine of Rs. 20 each. Accused Kusá (No. 3) to suffer four months’ imprisonment and to pay a fine of Rs. 50, and to receive twenty stripes.’

“Read and recorded the writ issued by the Konkan Court of Sessions to the Magistrate of the Ratnágiri District, calling for a certified copy of the circular order issued by him in August 1865 to Sub-Magistrates, and the return thereunto made by the said Magistrate of the District; and copies of two circular orders therewith certified.

“The circular orders are as follow :—

‘(No. 23.)

[Translated from the original Maráthí.]

‘To the Subordinate Magistrates.

‘The Honourable the High Court have ruled that all cases received from Subordinate Magistrates under Sec. 277 of

1866.
August 9.
Referred Case.

the Code of Criminal Procedure should be disposed of by the Magistrate of the District. As the observance of this procedure will occasion great inconvenience and hardship to persons connected with such cases, by their being compelled to travel over long distances, I direct that if, in the course of your inquiries into any case, you should consider that the offence, if established against the accused, is such as to call for a more severe punishment than you are competent to adjudge, you should at once stay proceedings, and send the case for trial, with the parties concerned in it, to the officer in charge of the Pránt (District Táluká), who will then proceed with it *de novo*. You are on no account to send up to me any case under Sec. 277. Dated 27th May 1863.

(Signed) J. W. ROBERTSON,
District Magistrate.

(No. 31.)

[Translated from the original Maráthí.]

“To the Sub-Magistrates 2nd Class.

“In modification of circular order No. 23, dated 27th May 1863, directing that all cases in which more severe punishment than you are competent to adjudge is called for should not be submitted to the Húzúr, it is hereby enjoined that you should, before commencing any inquiry into cases brought before you, carefully consider the nature of the offence charged against the accused; and should you on consideration be of opinion that the offence charged, if proved, would call for a severer punishment than you are authorised to award, you should, instead of proceeding with them, request the Foujdár to forward them to the officer in charge of the Pránt (District Táluká). You are to proceed with such cases only as may *primâ facie* appear to you to call for no heavier punishment than you are competent to adjudge. If, however, on completion of the inquiry, you may be led to think that the offence proved in any such case requires a higher punishment than what you can award, you should record your finding, with the reasons thereof, and forward

the record of the said case with the accused direct to the Húizúr (District Magistrate), you should not send witnesses &c. The cases referred to will be very rare indeed if the nature of the offence charged against the accused be carefully considered in the first instance before entering upon trial. Dated 2nd August 1865.

(Signed) H. B. BOSWELL,

‘District Magistrate.’

“I am of opinion that both these circulars are illegal, and beyond the District Magistrate’s competence. It appears to me that a District Magistrate is not competent by circular to forbid all the Subordinate Magistrates in his district from taking up cases which the Criminal Procedure Code says they may take up, if they think they shall have to act under the provisions of Sec. 277 of the Code in disposing of the case. * * *

“Both these circulars proceed on a mistaken view of the requirements of Sec. 277. (a) It is not necessary under this section for the Subordinate Magistrate to forward either the accused or the witnesses in the case to the District Magistrate. By the first part of the section the Subordinate Magistrate need only submit his proceedings to the District Magistrate. By the second part of the section, after the proceedings have been received by the District Magistrate, he may send for the accused, or for any witnesses he pleases, if necessary.

“Besides considering these circulars illegal, I am of opinion that they must be productive of inconvenience, instead of preventing inconvenience, to witnesses and others concerned in criminal cases. There are never more than three, and there are now only two, F. P. Magistrates for the whole district of Ratnágiri, which extends from Bánkoṭ to

“(a) Sec. 277. If in any case tried by a Subordinate Magistrate having jurisdiction in which the accused person is found guilty, such Magistrate shall consider the offence established against the accused person to call for a more severe punishment than he is competent to adjudge, he shall record the finding and submit his proceedings to the Magistrate to whom he is subordinate, and such

Magistrate shall pass such sentence or order in the case as he may deem proper, and as shall be according to law. In any such case the Magistrate to whom the proceedings are submitted may examine the parties, and recal and examine any witness who shall already have given evidence in the case, and he may call for or take any further evidence.”

1866.
August 9.
Referred Case.

Goa. Both these F. P. Magistrates are during the monsoon at Ratnágiri. As it is not necessary for the Subordinate Magistrates to send up the accused and witnesses to the District Magistrate, under Sec. 277 of the Code of Criminal Procedure, in the first instance, it would be clearly more for the convenience of the public if the Subordinate Magistrates were to dispose of as many cases as they legally can under Sec. 277, than if all such cases were sent for trial to the F. P. Magistrates.

“Therefore, on the grounds both of law and expediency, I think both these circulars should be cancelled and withdrawn.

“It is not, I believe, within my power to call on the District Magistrate to cancel these circulars, or rather to cancel them myself, or compel the District Magistrate to cancel them. It is, therefore, necessary that a copy of this judgment, together with all the papers now before the Court of Session, be forwarded for the orders of Her Majesty’s High Court of Judicature at Bombay.”

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

PER CURIAM :—The Court reverses the convictions and sentences ; and annuls the Magistrate’s circulars.

REG. v. RATANRA’V bin MAHA’DEVRA’V CHAVA’N.

Illegal sentence altered—Ind. Pen. Code, Sec. 188.

A sentence of *rigorous* imprisonment passed by a Magistrate F. P., under Sec. 188 of the Ind. Pen. Code, for disobedience to an order duly promulgated by a public servant, altered to one of *simple* imprisonment ; as the Magistrate’s finding did not show that the case came within the latter part of the section, in which case alone the infliction of rigorous imprisonment was authorised.

October 3.
Referred Case.

THE prisoner was convicted by A. K. Nairne, Magistrate F. P. in the Ratnágiri District, of disobedience to an order duly promulgated by a public servant, by forcibly taking possession of a field ; and sentenced to suffer rigorous imprisonment for twenty days, and to pay a fine of ten rupees, or in default of payment to suffer further rigorous imprisonment for ten days.