

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“Therefore, on the grounds both of law and expediency, I think both these circulars should be cancelled and withdrawn.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

The record and proceedings were called for, on a review of the District Magistrate's monthly criminal return, by R. H. Pinhey, Session Judge of the Konkan, by whom they were referred for the orders of the High Court, on the 19th of September 1866, with the following remarks:—

1866.
October 3.
Referred Case.

“The sentence of rigorous imprisonment passed by the Magistrate F. P. in this case is illegal.

“The accused was convicted by the F. P. Magistrate of disobedience to an order duly promulgated by a public servant, in having taken possession of a field upon which he had been ordered by the Magistrate not to encroach. The accused, therefore, committed an offence punishable under the first part of Sec. 188 of the Indian Penal Code, and with simple imprisonment only.

“I notice that there has been a good deal of illegal procedure in this case. The complaint was laid on the 6th of June 1866, before the F. P. Magistrate, who should have examined the complainant on solemn affirmation, and issued a summons to the accused. Instead of doing this, the Magistrate referred the complaint for inquiry to the Sub-Magistrate at Velamb, who referred it to the Foujdár at Velamb, who, after some inquiry, applied to the Magistrate for a warrant for the apprehension of the accused, as he could not find him. Although no summons had been issued, and although the police had no right to apprehend him, the Magistrate F. P. issued his warrant for the apprehension of the accused on the representation of the Foujdár. The Foujdár, armed with this warrant, apprehended the accused, and proceeded with his inquiry, examining all the witnesses and the accused. The Foujdár then handed up the case to the F. P. Magistrate, who tried it. The procedure described above is more like that required by the repealed Code of 1827, than that laid down in the Criminal Procedure Code. I further observe that the Magistrate did not incorporate in his proceedings a translation of the reasons for his finding and sentence, as required by Sec. 429 of the Code of Criminal Procedure.”

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

1866.
October 3.
Referred Case

PER CURIAM:—The Court alters the sentence from one of rigorous to one of simple imprisonment; as the Magistrate's finding does not show that the case came within the latter branch of Sec. 188 of the Indian Penal Code.

The Session Judge is requested to communicate his remarks to the Magistrate.

Sentence altered.

NOTE.—“Whoever, knowing that by an order promulgated by a public servant lawfully empowered to promulgate such order he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience cause or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”—*Ind. Pen. Code, Sec. 188.*

“It shall be lawful for any Magistrate, by a written order, to direct any person to abstain from a certain act, or to take certain order with certain property in his possession or under his management, whenever such Magistrate shall consider that such direction is likely to prevent or tends to prevent obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, or is likely to prevent or tends to prevent danger to human life, health, or safety, or is likely to prevent or tends to prevent a riot or an affray.”—*Crim. Proc. Code, Sec. 62.—ED.*

REG. v. DEVSA'NVAT bin SHIVRA'MSA'NVAT.

Stamp Act XXXVI. of 1860, Sec. 26—Crim. Proc. Code, Secs. 66 and 67—Irregular Procedure.

Conviction and sentence for an offence under a Stamp Act reversed on a reference by a Session Judge; as the proceedings of the Magistrate who tried the case were highly irregular.

October 3.
Referred Case.

THE prisoner was convicted by Rámchandra Amrit Dugal, Magistrate F. P. at Ratnágirí, under Sec. 26 of Act XXXVI. of 1860, of having sold an old stamped paper of the value of two annas; and sentenced to pay a fine of one rupee, or in default to suffer simple imprisonment for two days.