

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.

The record and proceedings were referred for the orders of the High Court, on the 19th of September 1866, by R. H. Pinhey, Session Judge of the Konkan, with the following remarks :—

1866.
October 3.
Referred Case.

“I sent for this case to see whether the prosecution had been commenced by the Collector of Stamp Revenue, as required by Sec. 37 of Act XXXVI. of 1860. In a certain sense the Collector of Stamp Revenue did commence the prosecution, for he wrote a Maráthí endorsement telling the ‘Húzúr Deputy Magistrate’ to inquire into the case, and report the result. Here was a double mistake. The F. P. Magistrate should not have been called by the obsolete title of ‘Húzúr Deputy Magistrate;’ and it is not proper to commence a prosecution by writing a note or letter to the Magistrate whom the prosecutor wishes to take up a case. The Collector was not acting in this case as the Magistrate’s official superior, but as a prosecutor on behalf of Government; and he should, therefore, have either made the complaint in person, or instructed a pleader to do so.

“Turning to the Magistrate’s proceedings in the case, I find it recorded :—‘The substance of the above complaint having been stated to the accused, Devsánvat bin Shivrámsánvat, he admitted the truth of the complaint, and showed no sufficient cause why he should not be convicted. He is, accordingly, convicted.’ What the above complaint signifies is not discoverable from the record: for there is absolutely no complaint on the record. The Collector’s endorsement certainly cannot be considered a complaint, for the words used therein are merely ‘*ápalekadún sadarhwishiiñ tajvíj hoún kaseñ jáleñ teñ samjáveñ*’ (i.e., you should inquire concerning the above matter and report the result).

“I am of opinion that a conviction so irregularly obtained ought not to be upheld.

“I also remark that the Magistrate issued a summons to the accused without having any complaint sworn before him, as required by the provisions of Secs. 66 and 67 of the Code of Criminal Procedure.”

1866.
October 3.
Referred Case.

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

PER CURIAM :—The Court reverses the conviction and sentence; and the Session Judge is requested to send a copy of his remarks on the case to the Magistrate, and to communicate to him the opinion of the Court that his proceedings in the case were highly irregular.

Conviction and sentence reversed.

NOTE.—In *Reg. v. Chinto Atmáram* and others, convictions and fines by C. B. Pritchard, F. P. Magistrate in the Tháná District, were, on a reference by the Session Judge, reversed by COUCH, C.J., and NEWTON, J., on the 6th of March 1867, for a similar neglect to comply with Sec. 52 of the Stamp Act, No. X. of 1862.—Ed.

REG. V. MALHÁRJI bin NAULOJI.

Penalty for breach of Town Rule—Act XXVI. of 1850—Subordinate Magistrate—Jurisdiction.

Held that a Subordinate Magistrate has no jurisdiction to impose a penalty for breach of a rule made by Town Commissioners under Act XXVI. of 1850, Sec. VII., cl. 5.

November 21.
Referred Case.

THIS was a reference by the District Magistrate of Puná, under Sec. 434 of the Code of Criminal Procedure.

Malhárji was charged with having committed a breach of a rule made by the Town Commissioners of Puná, in having built a house on the side of the public road without obtaining the consent of the Commissioners; and was convicted by Moro Vináyak, First Class Subordinate Magistrate, and sentenced to pay a penalty of two rupees, under Act XXVI. of 1850, Sec. VII., cl. 5.

The case was heard this day before COUCH, C.J., and NEWTON, J.

PER CURIAM :—The Court annuls the conviction and sentence, and orders the fine, if paid, to be restored; as the payment of the penalty could only be enforced by a Full Power Magistrate, and not by a Subordinate Magistrate, who had no jurisdiction to impose it.

Conviction and sentence annulled.