

REG. V. SADU VALAD PAVADI.

Retailing opium without license—Reg. XXI. of 1827—“Zillah Magistrate”—Jurisdiction.

A conviction and sentence by a Full Power Magistrate for breach of the rules for the retail sale of opium, under Reg. XXI. of 1827, Sec. 10, annulled for want of jurisdiction: as ‘the Zillah Magistrate’ alone was empowered to enforce the penalty.

SADU was charged with retailing opium without having previously obtained a license, contrary to the provisions of Reg. XXI. of 1827, Sec. 10; and was convicted by Vishnu Parasharám, F. P. Magistrate at Solápúr, and sentenced to pay a fine of forty rupees, or in default to undergo simple imprisonment for forty days.

1866.
December 5.
Crim. Review.

The record was called for and reviewed this day by COUCH, C.J., NEWTON and WARDEN, JJ.

PER CURIAM :—The Court annuls the conviction and sentence, and orders the fine, if paid, to be restored; as the District Magistrate alone had jurisdiction to try the case.

Conviction and sentence annulled.

NOTE.—“The penalty * * * shall be enforced by information before the Zillah Magistrate or Criminal Judge (according to the general code) if the act were committed within the jurisdiction of any Zillah Court.”—Reg. XXI. of 1827, Sec. VII., cl. 1. And for the meaning to be put on the term ‘Zillah Magistrate’ see *Reg. v. Prabhákar N. Soman, antè, p. 11.*—ED.

REG. V. KRISHNA’JI BA’PUJI GA’IKAVA’D.

Security for Good Behaviour—Irregular Sentence by Magistrate—Crim. Proc. Code, Secs. 296 and 434.

A direction annexed to a sentence of imprisonment under Sec. 448 of the Ind. Pen. Code—that the convict be brought up, at the expiration of the sentence, in order that he may give security for good behaviour for the period of one year—reversed: as not being authorised by Sec. 296 of the Crim. Proc. Code.

THE prisoner was convicted by W. H. Havelock, District Magistrate at Tháná, of house trespass, under Sec. 442 of the Penal Code; and sentenced to suffer six months’ rigorous imprisonment, “and, at the expiration of the sen-

1867.
January 30.
Referred Case.

1867.
January 30.
Referred Case.

tence, to be brought up, in order that he may give security for good conduct for the period of one year, under Sec. 296 of the Code of Criminal Procedure."

The Magistrate also recorded the following remarks in column 18 of his Return:—"The accused was in confinement for six months in 1865, for having failed to give security for good conduct."

The record and proceedings were called for by R. H. Pinhey, Session Judge of the Konkan, who recorded the following remarks:—

"Sec. 296 of the Code of Criminal Procedure contemplates special proceedings being held preparatory to making an order for security. From the statement in column 13 it would seem that the order for security forms a part of the sentence.

"I am of opinion that the record and proceedings must be referred for the orders of the High Court, under Sec. 434 of the Code of Criminal Procedure."

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

PER CURIAM:—The Court reverses that portion of the sentence which orders the prisoner to be brought up at the expiration of the six months' imprisonment, as not authorised by Sec. 296 (a) of the Code of Criminal Procedure.

The prisoner may, upon his discharge from the six months' imprisonment, if it be thought right that it should be done, be brought up and dealt with under Sec. 296.

Sentence amended.

(a) Sec. 296.—"Whenever it shall appear to the Magistrate of the District or to an Officer exercising the powers of a Magistrate, from the evidence as to general character adduced before him, that any person is by repute a robber, housebreaker, or thief, or a receiver of stolen property knowing the same to have been stolen, or of notoriously bad livelihood, it shall be competent to such Magistrate or other Officer as aforesaid to require security for the good behaviour of such person for a period not exceeding one year."