

REG. V. GANU valad RA' MOHANDRA.

1867.
July 11.

Ind. Pen. Code, Secs. 403 and 406—Criminal misappropriation—Criminal breach of trust—Crim. Proc. Code,—Jurisdiction—New Trial.

In a case referred by a District Magistrate, on the ground that the accused had been convicted, under Sec. 403 of the Penal Code, of dishonest misappropriation of property; whereas the charge should have been, under Sec. 406, of criminal breach of trust—an offence not within the cognisance of the Second Class Subordinate Magistrate who passed the sentence:—

The Court annulled the conviction and sentence; and directed the case to be tried before a proper court.

THE prisoner was convicted, by a Second Class Subordinate Magistrate, of the offence of dishonest misappropriation of property; and sentenced to eight days' simple imprisonment, under Sec. 403 of the Indian Penal Code.

The case was referred for the orders of the High Court, under Sec. 427 (a) of the Criminal Procedure Code, by H. N. B. Erskine, Acting Magistrate of Ahmednagar, with the following remark:—

“It appears from the proceedings, however, that the property misappropriated had been intrusted to the prisoner's care by the complainant; and the offence, therefore, was ‘criminal breach of trust,’ punishable under Sec. 406 of the Indian Penal Code,—an offence not triable by a Second Class Subordinate Magistrate.”

PER CURIAM (COUCH, C.J., NEWTON and WARDEN, JJ.):—The Court annuls the conviction and sentence; and directs that the case be returned for trial, on a charge of criminal breach of trust, before a proper court.

Conviction annulled and New Trial ordered.

(a) See the Court's remark in the last case.—Ed.