

1887.  
Oct. 9.

REG. V. BA'BA'JI bin BHA'U' and another.

*Ind. Pen. Code, Secs. 405 and 417—Crim. Proc. Code, Secs. 426 and 434.*

On a reference by a District Magistrate under Sec. 434 of the Criminal Procedure Code, where the conviction by a Subordinate Magistrate was for cheating; when it should have been for criminal breach of trust, for which the punishment awarded was a legal one:—

*Held*, that there was no occasion for the Court to interfere with the conviction or sentence.

THE prisoners were convicted, by the First Class Subordinate Magistrate of Pandharpur, in the Puná District, of cheating, under Sec. 417 of the Indian Penal Code, in that some silver having been intrusted to them for the purpose of making ornaments, they introduced copper; and were sentenced each to suffer four months' rigorous imprisonment, and to pay a fine of Rs. 150, or in default to suffer further imprisonment for a month and a half.

The record and proceedings had been called for and examined by J. E. Ohphant, District Magistrate of Puná; and were referred for the orders of the High Court, with the remark that the offence appeared to be criminal breach of trust under Sec. 405 of the Indian Penal Code, and not cheating.

PER CURIAM (COUCH, C.J., and NEWTON, J.):—The Subordinate Magistrate should be informed that the offence was criminal breach of trust, and not cheating; but as the accused have not been sentenced to a larger amount of punishment than could have been awarded for that offence, there is no occasion for the Court to interfere with the conviction or sentence.

*No order.*

NOTE.—See *Reg. v. Rághoji bin Kánoji*, 3 Bom. H. C. Rep., Cr. Ca., 42.—ED.