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et al.

COUCH, C.J. :—We think the sanction given by the Principal Sadr A'min ought not to be limited by the mention of Sec. 170 in the application; we should rather treat the mention of the section as mere surplusage. Then as far as the evidence against the first prisoner is concerned, his guilt is proved beyond doubt. But with regard to the second prisoner, I think there is some doubt, though the case looks very suspicious, and that, under the circumstances, we should reverse the sentence against him, and reject the petition of the first prisoner.

Petition of prisoner No. 1 rejected; and conviction and sentence against prisoner No. 2 reversed.

July 24.

REG. V. DIPCHAND KHUSHIA'L.

District Magistrate—Magistrate F. P.—Power to Refer—Jurisdiction—Crim. Proc. Code, Sec. 169.

Held that the Magistrate of a District to whom a case has been sent for investigation by a Civil Court has no power to refer it to a Magistrate F. P., and the latter has, therefore, *under such circumstances*, no jurisdiction to take up the case without complaint made to him.

THIS case was referred for the orders of the High Court, by R. H. Pinhey, Session Judge of the Konkan, under the provisions of Sec. 434 of the Criminal Procedure Code.

The facts of the case, and the grounds of submitting it to the High Court, will appear from the following extracts of the Session Judge's judgment recorded in it :—

“On examining the record and proceedings of the F. P. Magistrate, however, I find that his proceedings were illegal *ab initio*. The case was commenced by A'zam Amrit Shripat Nagpurkar, Munsif at Dápoli, on the 25th of March 1867, writing a *yád* or Maráthi letter to Mr. Boswell, Magistrate of the Ratnágirí District, requesting him to have the accused tried for an offence punishable under Sec. 209 of the Indian Penal Code. There would have been nothing wrong in Mr. Boswell commencing proceedings himself against the accused on this *yád* of the Munsif, because Mr. Boswell, as Magis-

trate of the District, is, under the provisions of Sec. 68 of the Code of Criminal Procedure, competent to take cognisance of offences without a complaint being made before him in the manner prescribed in Sec. 66. But Mr. Nairne, who is a Magistrate F. P., and neither the Magistrate of a district, nor the Magistrate in charge of a division of a district, cannot act under the provisions of Sec. 68, and can only take cognisance of offences on complaint being made before him, as contemplated in Sec. 66 of the Code of Criminal Procedure. In this case no complaint was ever made before the F. P. Magistrate, Mr. Nairne. On receiving the Munsif's *yád*, the District Magistrate referred the case for trial to the F. P. Magistrate, Mr. Nairne, whom he designated "First Assistant Magistrate." In this order of reference there was a double mistake. As a F. P. Magistrate is not subordinate to the District Magistrate, but to the Court of Session, the District Magistrate, Mr. Boswell, could not legally refer this case to the F. P. Magistrate, Mr. Nairne, for trial. The District Magistrate, Mr. Boswell, was also wrong in addressing the F. P. Magistrate, Mr. Nairne, as First Assistant Magistrate. The offices of Assistant Magistrate and Deputy Magistrate were abolished by Act XVII. of 1862; and the High Court has repeatedly ruled that these offices no longer exist. I have already pointed out this to the District Magistrate, Mr. Boswell. By ignoring the directions of the Court of Session and also of the High Court on this subject, and using a phrase which has no longer any legal significance, the District Magistrate has been led to treat the F. P. Magistrate, Mr. Nairne, as an assistant and subordinate of the District Magistrate, which he is not, and to make an illegal order of reference in this case, which appears to me to vitiate the whole trial before the F. P. Magistrate, Mr. Nairne."

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

PER CURIAM :—The Court annuls the conviction and sentence passed upon the prisoner; on the ground that the Magistrate F. P. had no jurisdiction to try the case without a complaint, as it was not sent to him by the Munsif for

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investigation, and the Magistrate of the District, to whom the Munsif sent it, had no power to refer the case to him.

Conviction and sentence annulled.

The remarks of the Session Judge in this and the preceding case having given rise to a false impression in the mind of the Acting Magistrate F. P. of Kaládgi, the following letter was addressed, by order of the Chief Justice and Judges of the High Court, to the District Magistrate of Kaládgi, in reply to a letter sent by him:—

“SIR,—I have the honour to acknowledge the receipt of your letter inquiring ‘whether a Magistrate F. P. can try a case in which the accused had been legally arrested without a warrant.’

“2. In reply I am directed to inform you that the Honorable the Chief Justice and Judges of Her Majesty’s High Court of Judicature concur in your view of the question, and are of opinion that a Magistrate F. P. can, when an offender has been legally arrested without a warrant by the police, try the case himself.

“3. I am also directed to inform you that the passage in the judgment of the Session Judge of the Konkan referred to (a) must be read in connection with the case before Mr. Pinhey, and to that extent is correct.

“4. The order of the High Court in the case of *Reg. v. Dipchand Khushál* was that ‘the Court annuls the conviction and sentence passed upon Dipchand Khushál, on the ground that the Magistrate F. P. had no jurisdiction to try the case without a complaint, as it was not sent to him by the Munsif for investigation, and the Magistrate of the District, to whom the Munsif sent it, had no power to refer the case to him.’

“5. The Court is not to be considered as adopting the judgment of the Court of Session, except so far as is expressed in its own order.”

(a) *Reg. v. Dipchand Khushál.*