

1867.
Oct. 9.

REG. v. BAGU valad OWSARI *et al.*

Subordinate Magistrate—Magistrate F. P.—Power to Refer—Jurisdiction—Crim. Proc. Code, Sec. 276.

A Subordinate Magistrate has no power to refer a case, which he has not himself jurisdiction to try, to a Magistrate F. P.; and the latter has, therefore, *under such circumstances*, no jurisdiction to take up the case without a complaint being made to him.

THE prisoners were convicted, by M. B. Baker, Magistrate F. P. in the Khándesh District, of theft as servants, and sentenced each, under Sec. 381 of the Indian Penal Code, to sixmonths' rigorous imprisonment, on the case being referred to him by a Subordinate Magistrate of the First Class.

Against this, Muhmad valad Gokul Prasád, one of the accused, preferred an appeal to the Honorable G. A. Hobart, Session Judge of Khándesh, who recorded the following judgment:—

“I find that the case was forwarded to the Subordinate Magistrate, First Class, who, finding that he was not legally competent to try the case, referred it for trial to a Magistrate F. P., being other than the Magistrate of the District; and it was thereupon tried, and appellant and the other accused were convicted and sentenced by the Magistrate F. P. on that reference. It appears to me that the Magistrate who tried the case, no complaint having been made to him, and he being not otherwise at liberty to try it, had no jurisdiction in the case. I, therefore, annul the conviction and sentence, and direct the trial of the case by a court of competent jurisdiction, that is, the Magistrate of the District. The appellant is to be released.”

The Session Judge, being of opinion as above, referred the case for the orders of the High Court, under Sec. 434 of the Criminal Procedure Code, with reference to the conviction and sentence passed upon the said Bagu, who did not appeal to him.

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

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PER CURIAM:—The Court annuls the conviction and sentence passed upon Bagu valad Owsari.

Conviction and sentence annulled.

REG. V. RANCHODDA'S NATHU'BHA'I.

Nov. 14.

Session Court—Informal Commitment—Magistrate F. P.—Reference.

A Court of Session cannot treat as a nullity the commitment of a Magistrate F. P. on the ground that he investigated the case, and committed the prisoner, without a formal complaint being made to him, but should proceed with the trial in the usual course.

THIS case was referred for the orders of the High Court by C. G. Kemball, Session Judge of Surat.

The facts appear from the following remarks of G. Aycrst, Assistant Session Judge:—

“ In this case, before the prisoner was arraigned, it was urged by the counsel for the defence that the case could not be proceeded with, as the same had been ‘improperly committed.’ The facts of the case in connection with this point are as follows:—This case was originally sent by the District Judge of Surat to the Magistrate of the District for investigation. The latter, without proceeding in the matter himself, directed a Full Power Magistrate of the same zilla to investigate the same. The latter investigated the case, and committed the accused for trial to the Sessions Court. But that Magistrate had no jurisdiction whatever. The Magistrate of the District had no power to refer the case for trial to a Full Power Magistrate, who is, for all the purposes of the present case, an officer of equal authority with himself. That F. P. Magistrate, therefore, acted contrary to law in proceeding with a case of this nature, concerning which no complaint had been preferred before him, or no order received from the District Judge. On this point I refer to the orders of the High Court which have recently been given respecting a case of a similar nature, which was