

1868.
REG.
v.
KHANDOJI
TANAJI.

and sentenced him to pay a fine of ten rupees, or in default of payment to undergo simple imprisonment for fifteen days.

The case was referred for the orders of the High Court, under Sec. 434 of the Code of Criminal Procedure, by F. Lloyd, Session Judge of Puná, with a remark that it did not appear to him that under the said Act the Mámlatdár was lawfully empowered to promulgate the order, and that disobedience to the order was, consequently, not an offence under Sec. 188 of the Penal Code.

PER CURIAM (COUCH, C.J., and NEWTON, J.) :—The Court reverse the order of the Magistrate F. P., and direct that the fine be refunded to the accused.

Conviction and sentence reversed.

March 10.

REG. v. JOAO THOMESIT, DOMINGOS THOMESIT, and
ANTONIO LOURENÇO DIAS.

*Conviction, Alteration of—Amendment of Sentence—Re-trial—
Crim. Proc. Code, Sec. 22.*

Held that an order of a Session Judge by which he altered a conviction by the Assistant Session Judge, of “dacoity” to one of “robbery,” was illegal, not being an amendment of a sentence or order within the meaning of Sec. 22 of the Crim. Proc. Code.

Held further that if the accused were, in the opinion of the Session Judge, improperly convicted of “dacoity,” he ought to have declined to confirm the sentence, and to have left them to be charged with and tried for “robbery.”

ALL three accused in this case were convicted, by A. Lyon, Assistant Session Judge of the Konkan at Tháná, on the 6th of December 1867, of dacoity, “in having on the high road attacked, with the assistance of about ten men, some pedlars, and carried away their property,” and were sentenced, under Sec. 395 of the Penal Code, each to be transported for seven years, subject to confirmation by the Session Judge.

The Session Judge, R. H. Pinhey, was of opinion that the conviction of dacoity must be altered to one of robbery

(under Sec. 392 of the Penal Code) against the accused Nos. 1 and 2, it appearing to him that these two men committed robbery—most probably while under the influence of liquor. He accordingly altered the conviction of dacoity to one of robbery, and directed that each of the accused Nos. 1 and 2 be rigorously imprisoned for one year. As he was not satisfied that the third accused was really concerned in the crime, he acquitted him and ordered his discharge.

1868.
REG.
v.
THOMESIT
et al.

The High Court, on a review of the monthly return, noticed the case, and requested the Session Judge to state the provision of law under which he considered himself authorised to alter the conviction. He was of opinion that the 3rd clause of Sec. 22 of the Code of Criminal Procedure authorised the alteration by him of the convictions and sentences recorded by the Assistant Session Judge, and that by the said clause he had power to review the proceedings of his Assistants as well as to hear appeals against them, and to amend their sentences and orders as well as to confirm or reverse them.

PER CURIAM (COUCH, C. J., and NEWTON, J.) :—The Court reverses the order of the Session Judge by which he altered the conviction of the accused Nos. 1 and 2, and passed reduced sentences upon them, and refers the case back to him for reconsideration.

The Court is of opinion that this was not an amendment of a sentence or order within the meaning of Sec. 22 of the Code of Criminal Procedure, and that the Session Judge has not the powers which are given to the High Court as a court of revision by Ch. XXIX. Sec. 434 is in accordance with this construction.

If the Session Judge thought that the parties had been improperly convicted of dacoity, he should have declined to confirm the sentence, and have left them to be charged with, and tried for, robbery.

Order reversed.