

1868.
March 10.

REG. V. MULIYA' NA'NA' *et al.*

Mitigation of Sentence—Appeal.

Held that a Session Judge has no power to mitigate a sentence passed upon a prisoner who has not appealed to him.

IN this case both the accused were, under Sec. 379 of the Penal Code, convicted, on the 4th of November 1867, by George Ayerst, Acting Assistant Session Judge of Súrat, of theft, “in having dishonestly taken seven ducks out of the possession of one Pestanji Dosábhái without his consent,” and were sentenced (No. 1 Muliya) to suffer rigorous imprisonment for two years and to receive two dozen lashes, and also to pay a fine of Rs. 10, to be levied by distress and sale of his moveable property, under Sec. 61 of the Code of Criminal Procedure, and (No. 2, Bhaglo, *alias* Bhagvân) to one month’s rigorous imprisonment and to receive one dozen lashes.

The accused No. 1, Muliya, having appealed, the Session Judge, C. G. Kemball, recorded the following judgment, under date the 21st of November 1867:—

“The Assistant Session Judge and the Assessors being of one mind, the appellate court sees no reason for disturbing the conviction. * * * In the case, however, of the second prisoner, it does not appear that he was ever previously convicted of any offence which rendered him amenable to the punishment of whipping in addition to other prescribed punishments. The sentence of the Assistant Session Judge was, therefore, illegal, and must be quashed. This prisoner, a mere child, appears to have been in jail for upwards of fifteen days, and has, therefore, in my opinion, suffered sufficient punishment. The whipping is not to be inflicted, and the prisoner Bhaglo is, therefore, discharged.”

Upon review of the Register of Criminal Appeals disposed of by the Session Court during the month of November

1867, the High Court sent for the papers and proceedings in this case.

PER CURIAM (COUCH, C.J., and NEWTON, J.):—The order of the Session Judge in the case of the accused No. 2, Bhaglo Náná, is annulled; and we now, having the record and proceedings before us, annul the sentence of whipping passed by the Assistant Session Judge. The sentence of imprisonment passed on the said Bhaglo Náná must be carried into effect.

Order annulled.

REG. V. GOPA'L LAKSHU'MAN AND GANPAT BA'BAJI.

March 10.

Jurisdiction—Illegal Order—Session Judge—Crim. Proc. Code, Sec. 435.

Where the Session Judge on appeal reversed a conviction passed by a Magistrate F. P. of an offence under Sec. 182 of the Penal Code (which the Magistrate F. P. was competent to try), and directed the Magistrate F. P. to institute proceedings against the accused under Sec. 211, considering that, on the complaint which had been made to him, the Magistrate F. P. was bound to institute proceedings under the latter section:—

The High Court reversed that part of the order of the Session Judge which directed the Magistrate F. P. to institute proceedings, as the case did not fall within Sec. 435 of the Criminal Procedure Code, and there was no provision of law giving the Judge jurisdiction to make such an order.

IN this case the accused were convicted by Rámchandra Amrut Dugal, Magistrate F. P. at Ratnágirí, “of giving false information to a public servant, in order to cause him to use his lawful power to the injury of and annoyance to a person;” and were sentenced, under Sec. 182 of the Penal Code, to undergo three months’ rigorous imprisonment and to pay a fine of Rs. 100, or in default to suffer additional rigorous imprisonment for six weeks.

One of the prisoners, Gopál Lakshúman, appealed to R. II. Pinhey, Session Judge at Tháná, who reversed the conviction and sentence as against him, and as regarded the other prisoner, who had not appealed, referred the case for the orders of the High Court, under Sec. 434 of the Code of Criminal Procedure. The Session Judge reversed the conviction of Gopál Lakshúman, on the ground that the act of the accused,

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