

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,

1868.  
REG.<sup>N</sup>  
v.  
GOPAL  
LAKSHUMAN  
et al.

in having stated to the Fouzdár that they had *suspected* the complainant of theft, did not constitute an offence punishable under Sec. 182 of the Penal Code, as it was not alleged that the accused knew or believed that the information which they gave was false.

Dec. 5, 1867. The case came before the Court (Couch, C. J., and Newton, J.), when the conviction and sentence passed upon Ganpat Bábáji were reversed, on the ground that the charge and finding did not show an offence.

While reversing the conviction of Ganpat, the Court noticed an irregularity in the proceedings of the Session Judge while reversing the conviction of Gopál Lakshuman. These proceedings were as follows:—

On the 13th of August 1867 the accused No. 1, Gopál, preferred an accusation to the Fouzdár at Ratnágiri against the complainant, Rávji Hari, whom he charged with having stolen from the verandah of his (Gopál's) house a brass lamp, valued at Rs. 1½, the property of a lodger, the accused No. 2, Ganpat. The Fouzdár inquired into the complaint, and holding it to be a false one reported to that effect, on the 15th of August 1867, to the Subordinate Magistrate, who directed the complaint to be struck off, and sanctioned the prosecution of both the accused, Gopál and Ganpat, for an offence punishable under Sec. 211 of the Penal Code. The Session Judge, being of opinion that the Subordinate Magistrate had rightly directed the prosecution under Sec. 211, considered that, on receiving the complaint of Rávji Hari together with a copy of the sanction given by the Subordinate Magistrate, the Magistrate F. P. was bound to proceed against the accused under Sec. 211 of the Indian Penal Code, and that the Magistrate F. P. was not legally competent finally to dispose of the case, but was bound, if the evidence for the prosecution was sufficient, to send it for trial before the Court of Session, the false charge made by the accused being of an offence punishable under Sec. 380 of the Indian Penal Code, with imprisonment for seven years. The Session Judge, therefore, directed the Magistrate F. P. to proceed according to law to dispose of the com-

plaint of Rávji Hari dated September 9th, 1867. This complaint stated that the Subordinate Magistrate had accorded his sanction to both the accused being prosecuted for preferring a false charge of theft against him, the complainant, and prayed that proceedings might be taken against them accordingly.

The Session Judge considered that (under Sec. 427) he was competent to direct the Magistrate to dispose of the complaint dated the 9th of September 1867, because it had not yet been disposed of; and he thought that that the fact of the Magistrate F. P. being directly subordinate to him, clothed him with the power of directing the Magistrate to proceed to dispose of the pending complaint after he (the Session Judge) had, in the exercise of his appellate jurisdiction, reversed the final order which the Magistrate had once made on that complaint.

PER CURIAM (COUCH, C. J., and NEWTON, J.) :—The Court reverses that part of the order of the Session Judge which directs the Magistrate to dispose of the complaint of Rávji Hari Málgundkar, dated 9th September 1867, as the case was not one falling within Sec. 435 of the Code of Criminal Procedure, and there is no provision of the law which gives the Session Judge jurisdiction to make such an order.

The Magistrate is to be at liberty to take such proceedings as he may think right.

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REG. V. RA'MLO JERIO.

Jan. 14.

*Adultery—Withdrawal of Charge—Husband.*

Where the husband of a woman, with whom the accused was alleged to have committed adultery, professed himself unwilling to proceed with the prosecution, and the Assistant Session Judge thereupon ordered the accused to be discharged :—

The Court, in the exercise of its discretion, declined to interfere.

IN this case the accused was charged with adultery with one Daili, wife of Ratno, and was committed to take his trial before the Session Court at Súrat. The husband of

1868.  
 & REG.  
 v.  
 GOPA'L  
 LAKSHU'MAN  
 et al.