

plaint of Rāvji 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 Rāvji Hari Mālgundkar, 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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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 Súrāt. The husband of

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1868. the woman with whom the accused was alleged to have committed adultery stated, when he was about to be examined, at the commencement of the trial, as a witness for the prosecution, that, as his wife had returned to him, he was unwilling to proceed further in the matter. Upon this the Assistant Session Judge ordered the accused to be discharged with the following remarks:—

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“Witness is the party whom the present offence most concerns, and, if he be willing to overlook the same, I am of opinion that no benefit would accrue to society by ordering him to depose to the facts of the case, as far as he may know them, and by continuing the prosecution.”

On a review of the Criminal Return of the Session Court, the High Court sent for the papers and proceedings, to determine whether a prosecutor could withdraw a charge after the case had been committed to a Court of Session, and whether the accused in this case should not have been acquitted, instead of being discharged, by the Session Court.

PER CURIAM (COUCH, C.J., and NEWTON, J.):—In the exercise of our discretion, we do not think it right to interfere in the matter, and direct the record and proceedings to be returned. In doing so, we follow the decision *In re Jamni and Parshotum (a)*.

(a) In this case, on appeal, ARNOULD, Acting C. J., and TUCKER J., reversed a conviction and sentence of adultery recorded by the Session Court of Ahmedâbâd, on the ground that the husband had desired to withdraw the charge at the trial before the Session Court, and had not been permitted to do so. The Court held that it was competent to the husband to withdraw from the prosecution, there being nothing to show collusion.—19th June 1864.