REG. *v.* SADA'SHIVA'PPA' PA'NDURANGA'PPA'.

1868. March 11.

Summons—Complaint upon Oath—Voluntary Appearance—Jurisdiction—Crim. Proc. Code, Secs. 66, 179, 248, *and* 257.

Where an accused person appears voluntarily before a Magistrate to answer a charge, the want of a complaint on oath, necessary for the issuing of a summons or warrant (Secs. 66 and 43 Crim. Proc. Code) becomes immaterial.

Semble—A Magistrate taking a complaint and issuing a summons thereon, acts not ministerially, but judicially.

Conditions under which a Magistrate may proceed with an investigation or trial without a complaint upon oath considered, and cases bearing on the question reviewed and explained.

THE record in this case was sent for by the Court, under Sec. 405 of the Code of Criminal Procedure, on an application from the Acting Magistrate of the District of Cánará.

The facts of the case were these:—

The Magistrate F. P. of the Kárwár Táluká received intimation, through an anonymous petition, that a village accountant in his district had received a gratification other than legal remuneration, he being a public servant. The *rayats*, who were alleged to have given this gratification, were sent for, and, in the presence of the accused, who appeared voluntarily before the Magistrate, no summons or warrant having been issued, deposed to the circumstance mentioned in the petition, and the Magistrate convicted the village accountant on their evidence, and sentenced him to six months' rigorous imprisonment and to pay a fine of Rs. 300, and in default of payment to suffer three months' further rigorous imprisonment.

The Acting Session Judge of Cánará, R. West, on appeal, annulled the conviction and sentence, on the ground that without a complaint the Magistrate had not jurisdiction.

PER CURIAM (COUCH, C.J., and NEWTON, J.):—The Court is of opinion that when the accused appears voluntarily to answer the charge, as he is in this case stated by the Session Judge to have done, the want of a summons, or of a

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complaint in order to the issuing of a summons (Sec. 66 of Crim. Proc. Code), becomes immaterial: Paley on Convictions, cap. 2, s. 4 (3rd Ed.), and the cases there cited, and also *Turner* v. *The Post Master General* (*a*).

The Session Judge has misapprehended the decisions of the High Court in the cases which he has quoted. In the first of these, that of Dipchand Khushál (*b*), the case having been sent by the Munsif to the Magistrate of the District, it was tried by another Magistrate, without any complaint having been made to him, and it was not suggested that the accused appeared voluntarily. In the second, the case of Bagu válad Owsari (*c*), no complaint was made to the Magistrate who tried the case, and it had been illegally referred by a Subordinate Magistrate to a Magistrate with Full Powers.

In the third case (*d*), described by the Session Judge as one in which the High Court held the trial before the Session Court to be good, although no complaint had been preferred, under Sec. 179, to the Magistrate who made the committal, the High Court expressly stated, as the ground of its decision, that, in order to give the Session Court jurisdiction, it was only necessary, under Sec. 359 of the Code of Criminal Procedure, that there should be a charge preferred by a Magistrate, or other officer specially empowered to make commitments to such court. The Court was not called upon to determine what would have been the effect of the want of a complaint, if the validity of the commitment had been questioned in the High Court before the trial had been completed in the Session Court, which could not itself treat a commitment so made as a nullity. The Session Judge is entirely wrong in inferring the decision of the Court to have been that Sec. 179 of the Code of Criminal Procedure does not, equally with Sec. 248, require a complaint.

The Court does not concur in the opinion of the Session Judge, that the taking a complaint and issuing a summons

(*a*) 34 Law J. Mag. Ca. 10.

(*b*) 4 Bom. H. C. Rep., Cr. Ca. 30. (*c*) *Ibid.* 34.

(*d*) *Reg.* v. *Ranchoddás Nathubhái, Ibid.* 35.

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thereon are ministerial acts. In cases not referred to by the Session Judge, the court has held that when a case is sent under Sec. 168, 169, or 170, and the Magistrate, to whom the case is sent by the court, himself investigates it, no complaint is necessary, nor is it necessary when the court itself holds an investigation, nor where the accused is lawfully apprehended by the Police without a warrant, and duly brought before the Magistrate. The Court, therefore, reverses the order of the Session Judge, and directs him to hear the appeal on its merits.

Order of the Session Judge reversed.

REG. v. SURKYA' valad DHA'KU.

March 19.

Detention of Accused by the Police—Remand—Crim. Proc. Code, Sec. 224.

Held that the order of a Magistrate sanctioning the detention by the Police of an accused person for an indefinite period is illegal. At the expiration of twenty-four hours from the time of arrest, the accused *must* be brought before a Magistrate, who can then remand for a period not exceeding fifteen days, under Sec. 224 of the Crim. Proc. Code.

No remand without a hearing can last for a longer period.

IN this case the accused was apprehended by the Police, on a charge of theft, on the 4th of August 1867. He was not forwarded to the Magistrate by the Police until the 4th of September 1867.

On reviewing the Monthly Criminal Return of the Magistrate of the Thán̤á District, the Session Judge, R. H. Pinhey, noting this detention of the accused by the Police, forwarded the case to the High Court, who sent for a report from the Magistrate of the District, and, after considering it, directed the Magistrate to intimate to the Subordinate Magistrate of Bassein that he had acted improperly in according sanction to the Police for the detention of the accused for so long a period.

Upon this the Magistrate of the District addressed, under date the 24th of February 1868, the following letter to the Registrar of the High Court:—