

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.

1868.  
REG.  
v.  
SADA'SHIV-  
A'PPA' PA'NDU-  
RUNGA'PPA'.

*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.

**I**N 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 Tháná 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:—

1868.  
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v.  
SURKYA'  
DHAKU.

“With reference to your letter No. 216 of the 6th instant, informing me that the Subordinate Magistrate of Bassein acted improperly in according sanction to the Police for the detention of Surkyá bin Dháku ‘for so long a period,’ I have the honour to observe that it is the practice in this zillá (and I believe a like practice exists in other zillás) for a Magistrate to accord his sanction for the detention of an accused person beyond twenty-four hours, in accordance with the *indefinite terms* of the Code: as should the evidence, for obtaining which detention has been accorded, turn out such as is likely to lead to a conviction, the case probably is one which has to be submitted by the Police to some other Magistrate, possessing higher jurisdiction than the one who accorded his sanction to the detention of the accused. He, consequently, has no ostensible means of knowing how long a period his order once given may be made to cover; and if he had, there is not definite authority in the Code empowering him, once he has given his authority for the detention of an accused person, to annul such order, or to define the period of detention.

“This was the plea put forward by the Subordinate Magistrate in the case above noted, and has been disallowed by the Honorable the Judges of Her Majesty’s High Court of Judicature. I would, therefore, beg respectfully to be informed whether it is implied that Magistrates are not to accord sanction in the *indefinite terms of the Code*. If so, in the unsatisfactory and undefined state of the law, as interpreted by Magistrates and the Police, the latter are to be required to specify in each case the *period* for which they desire detention to be accorded; and Magistrates to require satisfaction that persons are not detained longer than for the period for which sanction has been given, even though the case may be submitted to another court for final disposal.”

PER CURIAM (NEWTON, Acting C. J., and TUCKER, J.):—We must refer the Magistrate to our Circular No. 248 (a) dated

(a) NOTE.—Cl. 2 of the circular referred to is as follows:—

“2. Some Magistrates include in their Returns the prisoners in the custody of Police Foujdars. This is unnecessary. No Police Officer can

the 22nd of February 1866, and Sec. 224 of the Code of Criminal Procedure, from which he should have learnt that the terms of the Code are not, as he supposes, indefinite, but fixed. Fifteen days is the longest period for which an accused person can be remanded by order of a Magistrate.

The Magistrate should be requested to see that the circular above referred to is fully carried out in the Thaná collectorate.

1868.  
REG.  
v.  
SURKYA  
DHA'KU.

REG. v. PURSHOTAM VA' LJI.

April 15.

*Chairman of Municipal Commissioners appointed under Act XXVI. of 1850—Public Servant—Ind. Penal Code, Sec. 174.*

The Chairman of Municipal Commissioners appointed under Act XXVI. of 1850, although a public servant, is not legally competent as such to issue an order for attendance before him.

*Held*, accordingly, that disobedience of such an order was not an offence within Sec. 174 of the Indian Penal Code.

THE prisoner was convicted on the 26th of November 1867, by the Second Class Subordinate Magistrate of Bassein, in the Thaná District, of non-attendance in obedience to a summons from a public servant, and sentenced, under Sec. 174 of the Indian Penal Code, to pay a fine of one rupee, or in default to suffer simple imprisonment for two days.

The record and proceedings were referred for the orders of the Court, under Sec. 434 of the Criminal Procedure Code, by J. W. Robertson, Acting Magistrate of the District, with the following remarks :—

“On examination of the records and exhibits in the case, it appears that the summons disobeyed by the accused was issued by the Chairman of the Bassein Municipality, requiring him to attend on a certain date before him, to afford explanation in respect to certain excavations made by him in a cer-

legally detain a prisoner in custody for more than twenty-four hours without an express authority from a Magistrate, and this should not be extended beyond fifteen days without a hearing and a remand by an officer of competent jurisdiction. Prisoners in custody under such a remand should, of course, be enumerated in the Return under the head of the Magisterial Officers concerned.”