

1868.  
May 20.

## REG. v. VITHU bin MA'LLU.

*Post Office Act—Jurisdiction—Subordinate Magistrate.*

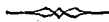
A Subordinate Magistrate has jurisdiction to try a prisoner for an offence under Sec. 47 of the Indian Post Office Act (Act XIV. of 1866).

THE record and proceedings in this case were referred for the orders of the Court by J. R. Arthur, Magistrate of the District of Sátará, under Sec. 434 of the Code of Criminal Procedure.

The accused was convicted and sentenced to pay a fine, under Sec. 47 of the Indian Post Office Act (XIV. of 1866), by the Second Class Subordinate Magistrate at Tásgám.

The Magistrate of the District was of opinion that offences under the above Act were not cognisable by a Subordinate Magistrate, and that, therefore, the trial of this case was illegal.

PER CURIAM (NEWTON, Acting C.J., and TUCKER, J.) :— Under the provisions of Sec. 53 of Act XIV. of 1866, with the interpretation given in Sec. 2 of that Act, the Court considers that a Subordinate Magistrate is competent to convict of an offence under Sec. 47.



May 20.

REG. v. SAKYA' valad KA'VJI *et al.**Sentence—Amalgamation of Sentences—Transportation—Ind. Pen. Code, Sec. 75.*

Sentence of transportation for fourteen years under Sec. 392 of the Ind. Pen. Code annulled, as the offence for which such sentence was passed was not committed *subsequently* to any conviction; and Sec. 75 had, therefore, been improperly applied.

*Semble*, that a Session Judge cannot (under Sec. 75 of the Ind. Pen. Code, or otherwise), by amalgamating a sentence which he is competent to pass upon a prisoner with a sentence under which such prisoner is already undergoing imprisonment, and commuting the latter sentence, condemn such prisoner to a longer period of transportation than he is liable to suffer for the crime of which he has last been convicted.

THE record and proceedings in this case were sent for by the High Court on a review of the Criminal Return of the Session Judge of Ahmednagar.

The accused were convicted by A. Bosanquet, Acting Session Judge, of robbery, under Sec. 392 of the Indian Penal Code, "in having, in the month of May 1867, caused wrongful restraint to one Gangá, wife of Bháú, and dishonestly and without her consent taken from her ornaments of the value of Rs. 7 or thereabouts." The following is an extract from the finding of the Session Judge :—

1868.  
REG.  
v.  
SAKYA' KA'VJI  
et al.

"The accused No. 1 is now undergoing a sentence of five years' rigorous imprisonment for robbery, and accused No. 2 has been sentenced for robbery to two terms of five years' rigorous imprisonment, the second to begin after the expiration of the first.

"According to a ruling of the Calcutta High Court (to be found at page 1, Vol. II., Calc. W. Rep., Cr. R.), 'to bring Sec. 59 of the Penal Code into operation, the punishment awarded for one offence alone must be seven years' imprisonment, and cannot be made up by adding two sentences together and then commuting the amalgamated period to transportation.' This ruling is not by a Full Bench, nor does it quote a Full Bench ruling on the subject. The consequences of this ruling would be, in my opinion, very inconvenient, and such as cannot have been intended by the Legislature.

"Assuming it, however, to be correct, I think that Sec. 75 of the Indian Penal Code empowers me to pass sentences of transportation on the accused Nos. 1 and 2, to commence from this day, and to include the unexpired portions of the previous sentences passed on them.

"The Court—concurring with the assessors in the case of accused No. 1, Sakyá, son of Kávji, and differing from them in the case of accused No. 2, Dhondi, son of Rámji—finds that accused No. 1, Sakyá, son of Kávji, and accused No. 2, Dhondi, son of Rámji, are guilty of the offence stated in the charge, namely, of robbery, an offence punishable under Sec. 392 of the Indian Penal Code; and the Court, under Secs. 392 and 75 of the Indian Penal Code, directs that accused No. 1, Sakyá, son of Kávji, be transported for ten years, to begin from this day, and to include the unexpired

1868.  
REG.  
v.  
SAKYA' KA'VI  
et al.

portion of the sentence passed on him in case No. 57 of the General Calendar for 1867, which sentence is hereby commuted; and that accused No. 2, Dhondi, son of Rámji, be transported for fourteen years, to begin from this day, and to include the unexpired portions of the sentences passed on him in cases No. 47 and 57 of the General Calendar for 1867, which sentences are hereby commuted."

PER CURIAM (NEWTON, Acting C.J.; and TUCKER, J.) :—Sec. 75 of the Indian Penal Code has been improperly applied to the case of Dhondi, and a longer term of transportation awarded than can be given under Sec. 392 of the Indian Penal Code; inasmuch as the offence for which sentence of transportation was passed was not committed subsequently to any conviction. The Court, therefore, annuls the sentence, and directs that a legal sentence be passed.

In the case of Sakyá, Sec. 75 of the Indian Penal Code has been improperly and unnecessarily applied, as the sentence of transportation was a legal one under Sec. 392 of the Indian Penal Code; and the Court, therefore, does not interfere.



April 2.

REG. V. GANU bin TA'TIA' SELAR.

*Complaint—Sanction—Crim. Proc. Code, Sec. 168.*

Prosecution for non-attendance in obedience to a summons was entertained without the sanction or complaint required by Sec. 168 of the Criminal Procedure Code :—*Held* that there was an implied sanction for the prosecution, as the conviction was by the same Magistrate whose summons was treated with contempt.

THE accused was convicted by the Second Class Subordinate Magistrate of Karanjá, in the Thana District, under Sec. 174 of the Indian Penal Code, of "non-attendance in obedience to a summons from a public servant," and sentenced to pay a fine of eight annas, or in default to suffer simple imprisonment for one day.

The case was referred for the orders of the Court, under Sec. 434 of the Code of Criminal Procedure, by J. W.