

1868,
June 17.

REG. V. CHENA'PPA' valad NA'GA'PPA'.

Imprisonment in default of payment of fine—Licence—Acts XXI. and XXIX. of 1867.

Where a Magistrate sentenced a person, who had neglected to take out a licence, under Act XXI. of 1867, Sec. 15, and Act XXIX. of 1867, Sec. 3, to pay a fine of ten rupees, and in default of payment to suffer seven days' simple imprisonment, the High Court reversed so much of the sentence as awarded imprisonment, as the trying Magistrate had, under the Act, no power to make such an order.

IN this case the accused was convicted of disobeying a notice caused to be served upon him by the Special Officer for the collection of the License Tax at Solápúr, requiring the accused to take out a licence and pay for the same within the time mentioned in the said notice, and was sentenced by J. R. Middleton, Subordinate Magistrate of the First Class, to pay a fine of ten rupees, or in default to suffer seven days' simple imprisonment, under Secs. 15 and 17 of Act XXI. of 1867, and Sec. 3 of Act XXIX. of 1867.

A. C. Jervoise, Magistrate F. P. of the Solápúr Sub-Collectorate, submitted to the High Court the Monthly Criminal Return with the following remarks upon this case:—

“I beg to state that I have entered no observations in column 19 respecting that part of the sentence which awards imprisonment in default of payment of the fine imposed: for it appears to me that, although Sec. 17 of Act XXI. of 1867, which prescribes the mode of recovering penalties, sets forth that ‘all penalties imposed under this Act may be recovered * * * in the manner prescribed by the Code of Criminal Procedure,’ it does not positively state ‘shall be recovered;’ neither do I understand that the law laid down in Sec. 64 of the Indian Penal Code, which provides that ‘in every case in which an offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct by the sentence that in default of payment of the fine the offender shall suffer imprisonment,’ &c., is applicable in this instance.”

PER CURIAM (NEWTON and TUCKER, JJ.):—The Court re-

verses so much of the sentence as awards seven days' imprisonment in default of payment of the fine, as the Court holds that, under the Act, the trying Magistrate had no authority to make such order.

1868.

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CHENA'PPA'
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REG. V. SANTU BIN LAKHA'PPA' KORE.

June 17..

Imprisonment—Ind. Pen. Code, Sec. 290—Public Nuisance.

The sentence of imprisonment passed in default of the payment of a fine inflicted under Sec. 290 of the Indian Penal Code (for committing a public nuisance) should be one of simple, not rigorous, imprisonment.

THIS case was called for by the High Court on a review of the Criminal Return of the Magistrate of the District of Sátará for the month of September 1867.

The accused was convicted by Mahádáji Vishvanáth, Subordinate Magistrate of the First Class, of committing a public nuisance, in having allowed dirty water to run into the street at U'ran, and sentenced, under Sec. 290 of the Indian Penal Code, to pay a fine of five rupees, or in default of payment to suffer rigorous imprisonment for five days.

On an examination of the Subordinate Magistrate's Monthly Return, the Magistrate F. P., G. H. D. Wilson, remarked that the sentence of imprisonment awarded in default of payment of the fine should have been simple, and not rigorous, and that, although Sec. 67 of the Penal Code was not clear on this point, still on reading Sec. 291 it did not appear to him proper to award the sentence of rigorous imprisonment in cases coming under Sec. 290. The Magistrate of the District said that, as the law was silent, no order regarding it could be issued.

PER CURIAM (COUCH, C.J., and NEWTON, J.):—The Court amends the sentence by substituting "simple" for "rigorous" imprisonment.