

1868.
June 17.

REG. v. BHA'GU bin SHA'BA'JI.

Crim. Proc. Code, Sec. 276—Magistrate F. P. with power to hear appeals.

Held that a Magistrate F. P., though empowered to hear appeals, is not thereby placed in the position of the Magistrate of the District, and that, therefore, Subordinate Magistrates should not refer cases, under Sec. 276 of the Code of Criminal Procedure, to such Magistrate, but to the Magistrate of the District, to whom alone they are subordinate.

THIS case was referred for the orders of the High Court by R. W. Hunter, Acting Session Judge of Sátará, under Sec. 434 of the Code of Criminal Procedure, with the following remarks :—

“It appears from the Magistrate’s Criminal Return for April (1868) that this case was first sent to the Subordinate Magistrate, Second Class, of Táluká Wái, on a charge under Sec. 379 of the Indian Penal Code, but the Magistrate, considering the offence to come under Secs. 379 and 411 of the Indian Penal Code, sent it up to the Magistrate F. P., under Sec. 276 of the Code of Criminal Procedure. I think the Subordinate Magistrate should have sent it to the District Magistrate. I must, therefore, refer the case for the orders of the High Court. I should at the same time state that the F. P. Magistrate in this instance is empowered to hear appeals from the Subordinate Magistrate, and, therefore, the question may, perhaps, still arise, whether the Subordinate Magistrate was not right in what he did.”

PER CURIAM (COUCH, C.J., and NEWTON, J.):—The Court annuls all the proceedings of the Magistrate F. P., and directs the Subordinate Magistrate to refer the case to the Magistrate of the District, to whom alone he is subordinate.

NOTE.—With reference to the word “subordinate” used in the clause “he shall stay proceedings, and shall submit the case to the Magistrate to whom he is subordinate,” occurring in Sec. 276 of the Code of Criminal Procedure, the Magistrate of Kárwár, M. J. Shaw Stewart, asked to whom the different grades of Magistrates were subordinate, when the Judges of the High Court directed the following reply to be given to him :—

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“ All Magistrates are Subordinate Magistrates except those who are authorised to exercise the full powers of a Magistrate. Subordinate Magistrates are subordinate to the Magistrate of the District or Division of a District only. It has been held that where the Government confers upon a Magistrate with Full Powers the power to hear appeals under Sec. 412, that does not make the other Magistrates subordinate to him in the sense of Sec. 434 of the Code of Criminal Procedure.”—*Vide* High Court's letter No. 210 dated the 8th of March 1864.

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REG. v. BA'I DIVA'LI.

Irregular Procedure—Stamp Act, Secs. 3 and 52—Complaint—Collector's Sanction.

Conviction and sentence under Sec. 3 of Act X. of 1862 (Stamp Act) reversed, because no complaint had been made before the trying Magistrate.

A memorandum, under the signature of the Collector, sanctioning the prosecution, cannot be accepted in the place of a complaint so as to authorise the issuing of a summons.

THE accused was convicted by M. H. Scott, Magistrate F. P. in the Kheda Division, under Sec. 3 of the Stamp Act (X. of 1862), of being party (grantee) to a deed of gift on insufficiently stamped paper, and sentenced to pay a fine of forty-two rupees.

The Acting Session Judge at Ahmedabad, A. L. Spens, referred the case for the orders of the High Court, under Sec. 434 of the Criminal Procedure Code, with the following remarks :—

“ I sent for this case to see whether the prosecution had been commenced by the Collector of the District, as required by Sec. 52 of Act X. of 1862. I find on the record a mere sanction for the prosecution of the accused under the signature of the Collector, and that the Collector did nothing more than forward this sanction, with the deed which called it forth, to the Magistrate.

“ The Magistrate apparently acted on this sanction *only*, and, without having any sworn complaint before him, issued his summons to the accused.

“ This case is nearly similar to one published at page 34 of the Bombay High Court Reports, Vol. III., and I am of