

"I see no illegality in the Magistrate's proceedings in this case. The petitioner himself passed the recognisance bond to be present as occasion might require, and it was clearly his duty to be present when the case was called on by the Magistrate. The petitioner has failed to show any satisfactory grounds for action on my part under Sec. 434 of the Criminal Procedure Code. As this is not an appeal, I am not called on to see whether the petitioner has been properly fined or not."

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The case was heard this day, before NEWTON and TUCKER, JJ.

*Pándurang Balibhadra* for the petitioner.

*Dhirajlál Mathurádás* for the prosecution.

PER CURIAM:—In a case where the personal attendance of an accused is dispensed with, a recognisance bond, if deemed necessary, should be taken from him, and not from his agent, the accused being bound, under the terms of such recognisance, to appear, either in person or by an agent, and if the agent neglected to attend when the case was called on, the recognisance bond might be held forfeited, and the accused made liable for the payment of the penalty. We hold that the Magistrate had no legal authority to secure the attendance of the agent by a bond of this description, and accordingly annul the Magistrate's order directing the enforcement of the recognisance bond taken from the agent.

*Order annulled.*

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July 30.

*Offence not triable by Subordinate Magistrate—Power of District Magistrate to annul conviction—Crim. Proc. Code, Secs. 427 and 434.*

Where, on appeal from a conviction by a Subordinate Magistrate, the Magistrate of the District is of opinion that the offence which the evidence brings home to the prisoner is one not triable by a Magistrate, and that an illegality has been committed, he should refer the matter for the orders of the High Court, under Sec. 434 of the Criminal Procedure Code; such Magistrate cannot himself, under Sec. 427, annul the conviction, and direct the committal of the prisoner to the Court of Session upon the proper charge.

THIS was a reference made for the orders of the High Court by J. Elphinston, Acting Magistrate of the Dis-

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trict of Cánará, under date the 2nd of July 1868, with the following remarks :—

“The facts deposed to by the witnesses for the prosecution appear to me sufficient, if proved, to establish a charge of attempt to commit rape ; but the Subordinate Magistrate tried the case himself, under Secs. 354 and 457 of the Indian Penal Code, and sentenced the accused to three months' imprisonment and to pay a fine of twenty-five rupees, or in default of payment to suffer one month's rigorous imprisonment.

“As the evidence for the prosecution did not appear to me worthy of belief, I reversed the judgment of the lower court.

“I wish, however, to be favoured with the instructions of the High Court in what way to dispose of a case, in which the fault committed and brought home to the accused before a Subordinate Magistrate of the First Class is one not triable by a Magistrate at all. Is it competent to me, as laid down in Sec. 427 of the Code of Criminal Procedure, to annul the conviction and sentence, and to direct the committal of the accused before the Court of Session ?

“It may be held that Sec. 427 gives this authority only to a Court of Session, and the decision in the case of *Kalidas Lalidas*, 21st March 1864, noticed under Sec. 427 in Mr. West's edition of the Criminal Procedure Code, throws some doubt on my view of the case (expressed in my judgment in appeal), but in the case quoted, the qualifying words “in general” occur, and I am of opinion that the objection made in the case of *Kalidas Lalidas* could not occur in a case like that under reference, where the facts, if proved, undoubtedly indicate an offence demanding a far heavier penalty than it is within the power of a Subordinate Magistrate to inflict.”

PER CURIAM (NEWTON and TUCKER, JJ.) :—Any case of the character reported by the Magistrate in which he shall be of opinion that an illegality has been committed, should be referred to the High Court, under Sec. 434 of the Code of Criminal Procedure. He is not competent himself, under Sec. 427, to annul the conviction and sentence.