

1868.
Aug. 13.

REG. V. DA'MODHAR RA'MCHANDRA KULKARNI.

False Evidence—Ind. Pen. Code, Secs. 191 and 192.

To constitute the offence of giving false evidence under Sec. 191 of the Indian Penal Code, it is not necessary that the false evidence given should be material to the case in which it is given. *Aliter* under Sec. 192.

Where the Senior Assistant Session Judge without taking evidence acquitted the accused after calling upon him to plead, the prosecutor being unable to say that the alleged false statements of the accused were material to the trial on which they were made, the High Court reversed the order of acquittal, and directed the trial to be proceeded with.

THIS was a case submitted by A. Clarke Jervoise, Magistrate F. P. in charge of the Solápur District, for the orders of the High Court.

The accused was committed for trial to the Senior Assistant Session Judge's Court for committing an offence, as defined in Sec. 191 of the Indian Penal Code, namely, giving false evidence. N. Daniell, Acting Senior Assistant Session Judge, pointed out to the Government Prosecutor that it must be shown that the alleged false statements were material to the case in which they were made. The Government Prosecutor being unprepared to do so, the Senior Assistant Session Judge acquitted and discharged the accused, after only calling on him to plead.

In submitting the case to the High Court, the Magistrate observed :—"Sec. 192 of the Indian Penal Code requires that fabricated false evidence should affect a 'point material to the result' of the proceeding in which it appears; but this provision is omitted (apparently purposely) in Sec. 191 of the Indian Penal Code, which defines the offence of giving false evidence, and nowhere lays down the above restrictive proviso."

PER CURIAM (NEWTON and TUCKER, JJ.) :—The Senior Assistant Session Judge, instead of proceeding with the trial of the accused, who was legally committed for trial before him, acquitted him after only calling on him to plead, having erroneously held that it was necessary that the false statements with which he was charged should be material to the trial in which they were made, and that they were not mate-

rial. The Court, therefore, reverses the order of acquittal made under these circumstances by the Senior Assistant Session Judge, and directs that the trial be proceeded with.

1868.

REG.

v.

D'AMODHAR
R. KULKARNI.

Order of acquittal reversed.

REG. V. KRISHNA' PARASHRA'M *et al.*

Aug. 26.

District Magistrate—Full Power Magistrate—Subordinate Magistrate—Crim. Proc. Code, Ch. XVI., and Secs. 14, 273, and 434.

Held that the Magistrate of a District before whom a criminal case is brought, either on complaint preferred directly to such Magistrate, or on the report of a Police Officer, cannot, under Sec. 273 of the Criminal Procedure Code, refer such case to a Magistrate F. P.

A Magistrate F. P., though executive inferior to the Magistrate of the District, is not a "Subordinate Magistrate" within the meaning of Ch. XVI. of the Criminal Procedure Code, nor is he "immediately subordinate" to the District Magistrate, within the meaning of Sec. 434 of the same Code.

THIS case was referred for the orders of the High Court, under Sec. 434 of the Criminal Procedure Code, by T. C. Hope, Magistrate of the District of Súrat.

The facts appear from the judgments.

The case was argued before a Full Bench (COUCH, C.J., NEWTON, WESTROPP, TUCKER, WARDEN, and GIBBS, JJ.) on the 5th of August 1868.

White (with him *Dhirajlál Mathurádás*, Government Pleader) for the Crown.

Cur. adv. vult.

COUCH, C.J. :—In this case a complaint was made to the Magistrate of the District of Súrat of voluntarily causing hurt, and he referred the case to a Magistrate F.P., who refused to hear it; and the question we have to determine is whether he was right in his refusal. The opinion that a Magistrate with full powers is not subordinate to the Magistrate of the District in the sense in which that word is used in the Code of Criminal Procedure, and that the Magistrate of the District has not power to refer a case to him, was, I understand, held by the late Chief Justice and Mr. Justice Hebbert and Mr. Justice Forbes; and this