

1868.  
Nov. 13.

REG. v. KERU bin RA'MSHET *et al.*

*Act (Bombay) VII. of 1867, Sec. 31—Resident Magistrate—Notification by Government.*

Bombay Act VII. of 1867, Sec. 31, became at once operative in all places where a Magistrate was resident, without having been specifically extended thereto by Government by *Notification*.

**I**N this case the accused were convicted by the Subordinate Magistrate of the Second Class at Nágotná, in the Kulábá Sub-Collectorate of the Tháná District, under Sec. 31 of (Bombay) Act VII. of 1867; and were sentenced each to pay a fine of eight annas or in default to suffer simple imprisonment for two days, in that they threw a mass of filth or refuse close to a public road in the said town of Nágotná.

The Acting Magistrate of the District, J. W. Robertson, was of opinion that the operation of Sec. 31 to any town, place, or road required to be specially extended by Government by notification, which had not been done in respect of any part of the Tháná District, and that, therefore, the conviction and sentence passed in the case were null and void.

PER CURIAM (NEWTON and TUCKER, JJ.):—The record and proceedings to be returned, inasmuch as Sec. 31 of (Bombay) Act VII. of 1867 became at once operative at Nágotná, without being specially extended to that town by Government by notification, as there was a Magistrate resident at that place.

Nov. 19.

REG. v. DHONDU RA'MCHANDRA.

*Complaint—Conviction of Offence other than that stated in Complaint—Crim. Proc. Code, Sec. 250.*

Where a complaint laid before a Magistrate F. P. by certain Government *employés* accused the prisoner of criminal breach of trust of their wages, but from the evidence adduced it appeared that the offence of which the prisoner was guilty was criminal breach of trust of Government money: *It was held* that the Magistrate F. P. had power to frame a charge against, and convict, the prisoner of the latter offence without a fresh complaint being made to him.

**T**HIS was a case submitted for the orders of the High Court by the Honorable G. A. Hobart, Session Judge

of Khándesh, under Sec. 434 of the Code of Criminal Procedure, with the following remarks :—

“ A Magistrate F. P. not being Magistrate of the District or of a division of the District, on a complaint made by certain persons that ‘ money due to them as wages had been withheld from them by a person whose business it was, on behalf of their employers (Government), to pay them their wages,’ framed a charge of criminal breach of trust against the person so accused, and convicted him of the same, and sentenced him. The convict appealed to the Sessions Court. I was of opinion, on hearing the appeal, that though there might be proof of the convict having committed criminal breach of trust in respect of Government money, as he appeared to have embezzled money which he charged to Government as part of the *employés*’ wages (he charged the wages at a higher rate than the *employés* had a right to), yet he had not withheld from the complaining *employés* anything due to them, nor was there, to my satisfaction, proof that he had tried to do so. I was, therefore, prepared to reverse the conviction and sentence if it had proceeded wholly on the ground of the accused having been proved to have withheld the *employés*’ wages. The Magistrate, however, convicted the accused of having in certain instances committed criminal breach of trust in respect of Government money. I was of opinion that the Magistrate F. P. had not authority to do this, as it was travelling beyond the complaint, and that he was not a ‘ Criminal Court’ for this purpose. By Sec. 11 of the Criminal Procedure Code, a Criminal Court denotes a ‘ Magistrate lawfully exercising jurisdiction in criminal cases.’ But no other Magistrate than the Magistrate of the District, or of a division of the District, has jurisdiction to take cognisance of any offence (unless committed in his presence) except on a complaint duly made to him.” To travel beyond a complaint, and to charge a person with an offence he is not accused of by a complainant, even though proceeding on evidence taken consequent on a complaint so made, is, in my opinion, equivalent to taking cognisance of an offence without a complaint having been

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made. Therefore, though not overlooking Secs. 426 and 439 of the Criminal Procedure Code, I reversed the conviction and sentence, and directed the release of the convict appellant.

“ I have reason to believe that my view of the law, as above expressed, is not concurred in by the Magistrate of the District. I, therefore, have thought it advisable, under Sec. 434 of the Criminal Procedure Code, to report the case for the information of the High Court.”

In a subsequent communication the Session Judge wrote :

“ It has come to my knowledge that the Magistrate who presided at the trial of Dhondu Ramchandra is of opinion that, under Sec. 250 of the Criminal Procedure Code, he was bound to charge the accused with any offence which he should find apparently proved against him, and that it was only in case he should find that apparently *no* offence was proved against him that he had power to discharge him.”

NEWTON, J. :—We are of opinion that a Magistrate, when a proper complaint has been made to him, if on the evidence he finds that an offence different from the one expressly charged had been committed, has power to inquire and proceed against the accused with regard to the other offence. As the Session Judge, therefore, has committed an error in law, in reversing the conviction of the Magistrate F. P., on account of his having convicted the accused of an offence different from that stated in the complaint, we must reverse the order of acquittal passed by the Session Judge, and direct that the accused be committed to prison to undergo the remainder of his sentence, unless the Session Judge should see fit to alter or reverse the sentence on further hearing the appeal, which he should now proceed to dispose of.

TUCKER, J., concurred.