

CROWN CASES
DECIDED IN THE
ORIGINAL AND APPELLATE JURISDICTIONS
OF THE
HIGH COURT OF BOMBAY.

REG. V. JIVANJI LIMJI.

1869
Feb. 11.

*Bond to keep the peace—Credible Information—Report by
Sub-Magistrate—Legal Evidence—Crim. Proc. Code, Secs.
282, 288, and 307.*

A statement by a private person not upon oath or solemn affirmation is not credible information, upon which alone a magistrate should issue a summons under Sec. 282 of the Code of Criminal Procedure.

Semle—A report by a Subordinate Magistrate of facts within his knowledge would be credible information, upon which such summons might issue, but would not be sufficient ground for a final adjudication under Sec. 288.

In order to warrant an adjudication under Sec. 238, there should be a judicial investigation, and the order should be passed upon legal evidence duly taken and recorded.

In this case the accused was required to give security, under Sec. 288 of the Code of Criminal Procedure, by T. C. Hope, Magistrate of the District of Surat, who made the following order :—

“Jivanji Limji appears in answer to a summons, issued under Sec. 282 of the Criminal Procedure Code, calling on him to show cause why he should not be required to enter into a bond to keep the peace towards Adarji Bhikaji and others connected with him, residing in Hansot.

“Read and recorded a list of nine magisterial and eight revenue cases, from which it appears that Jivanji in two instances brought, or was concerned in, complaints against Adarji, of various kinds, which were for the most part vexatious and frivolous, and that in other instances he was rightly prosecuted by Adarji for acts which were, under the circumstances, likely to produce a breach of the peace.

VI. 1 C. C.

1869
 Reg.
 v.
 Jivanji Limji.

"Jivanji Limji states: 'I have been taking liquor contracts in the Hansot district for the last two years, so I my on bad terms with Adarji Bhikaji, who used formerly to combine with others in taking the contracts below their value, and who wants me to go shares with him. I have only complained twice for assault, and my complaints were dismissed after four months' delay. He has this year got five shops, and I will not go shares with him. Taljaram Vitaldas and two others can testify to this. I have never been punished in my life, and can offer evidence as to a character.'

"The Court, after carefully considering the cases recorded, and the credible information received from the Mamlatdar, Mahalkari, and others, and being for some time personally acquainted with both parties, is of opinion that Jivanji Limji is habitually, the aggressor, and does, or causes to be done, various acts in the nature of persecution that may probably cause a breach of the peace. The Court is satisfied that it is necessary, therefore, to take from Jivanji a bond to keep the peace for Rs. 300, with one surety of equal amount, or two of Rs. 150 each; and the Court orders that Jivanji Limji enter into a bond accordingly for the period of one year."

The Session Judge, C. G. Kemball, referred the case for the orders of the High Court, under Sec. 434 of the Criminal Procedure Code, with the following remarks:—

"These proceedings consist of a petition made by Adarji Bhikaji, but unsupported by solemn affirmation, containing a serious of general charges against one Jivanji Limji, his friends and servants, for interfering with his management of a liquor contract, and against some of the sub-magisterial officers for not giving him redress; also of a detailed statement of various cross-complaints between the two parties and their dependants, a summons to Jivanji Limji, dated 26th November, Jivanji's answer on appearing in compliance with the summons on the same date, and the Mahalkari's report as to the fitness of one Jamasji to be a surety.

" Upon this record the Magistrate, remarking ' The Court, after carefully considering the cases recorded, and the credible information from the Mamlatdars and Mahalkaris and others, and being for some time personally acquainted with both parties, is of opinion,' &c., took a bond from Jivanji with one surety to keep the peace for one year. But as there is no record whatever of the ' credible information ' on which the Magistrate proceeded against Jivanji, and the Magistrate had no power to act upon his own bare personal knowledge, whatever that may have been, I consider that the order passed was contrary to law, and, therefore, determine to refer the proceedings for the orders of the High Court.

1869
 Reg.
 v.
 Jivanji Limji.

" The Government Pleader, who was instructed to appear in support of the Magistrate's order, has argued that no evidence is necessary, under Secs. 282 and 288, the order to furnish security being a matter purely for the discretion of the Magistrate, that is to say, that the Magistrate can act upon any kind of information, formal or otherwise, that he thinks credible ; but credible information appears to mean legal proof, and Sec. 307 provides for the taking of such evidence. To summon a man, and to order him to find security, upon information which it is manifestly impossible for him to meet, appears to me directly contrary to the spirit of the law."

The case was heard before TUCKER and WARDEN, JJ.

Dhirajlal Mathuradas, (Government Pleader,) appeared in support of the order.

TUCKER, J. :—This is a reference made by the Session Judge of Surat under Sec. 434 of the Code of Criminal Procedure. He transmits the record of the proceedings of the District Magistrate of Surat in the case of one Jivanji Limji, who was ordered, on the 26th of November 1868, to enter into a bond for a sum of Rs. 300 to keep the peace for the term of one year, with one surety for an equal amount, or two sureties for sums of Rs. 150 each. The order appears to have been made under Sec. 288 of the Criminal Procedure Code, and the Session Judge is of opinion that it

1869

Reg.
v.

Jivanji Limji

should be set aside, on the ground of its being contrary to law, in consequence of its having been made without any legal evidence having been taken and recorded.

On examining the Magistrate's proceedings, it would seem that he in the first instance issued a summons under Sec. 282, on a simple petition of complaint made by a Parsi named Adarji Bhikaji, unsupported by any declaration upon oath, and that on the appearance of the accused, who in no way admitted the allegations against him, the Magistrate made the final order without taking or recording any evidence, either against him or in his favour.

The grounds for this order are stated by the Magistrate as follows :—

(1) The perusal of certain cases, revenue and magisterial, in which the accused or his friends were complainants, or in which the accused had been prosecuted by the petitioner Adarji. The Magistrate has given a list of these cases, but he has recorded none of them.

(2) Credible information stated to have been received by the Magistrate from certain Mamlatdars, a Mabalkari, and others. None of these informants are named or otherwise designated, nor have any reports from, or statements made by them, been recorded, nor has any substance of the information which they supplied been given.

(3) The Magistrate's personal acquaintance for some time with the accused and the person who complained against him.

Mr. Dhirajlal, the Government Pleader, has appeared in support of the Magistrate's order, and has contended that a District Magistrate may make an order, under Sec. 288, upon any information which he may deem credible, and that it is not necessary that this information should be upon oath or solemn affirmation, or that it should be taken down in writing and recorded; that it is sufficient, if the Magistrate feels satisfied from such information as he may possess or from circumstances within his knowledge, that it is necessary for the preservation of the peace that the person before

him should be bound over to keep the peace, to authorise him to act under Sec. 288; and that no further record was requisite than that the Magistrate was so satisfied. In the present instance the Magistrate has done everything that he was bound by law to do. Mr. Dhirajlal cited in support of his argument a ruling of the Agra Sadr Court in 1862, of which a note is given by Mr. Princep in his edition of the Code of Criminal Procedure, under Sec. 282, and a decision of the Madras High Court *Ex parte Nilikel Edathil (a)*.

1869

Reg.

v.

Jivanji Limji.

We have not had access to the report of the decision of the Agra Sadr Court which has been referred to. If Mr. Princep's note of the ruling be correct, we are compelled to state that we dissent from the opinion therein expressed. We are unable to hold that a statement by an irresponsible person, unsupported by an oath or solemn affirmation, can be lawfully treated by a Magistrate as credible information or that a Magistrate would be authorised to issue a summons under Sec. 282 on such a statement alone. We concur in the view of the Madras High Court, that a report by a Subordinate Magistrate of facts within his knowledge would amount to credible information, and, if duly recorded, would form a ground for a Magistrate's issuing the preliminary summons, as directed in Sec. 282; but we cannot go any further, or hold that a report of this description would, unsupported by other evidence, form a sufficient ground for the final adjudication referred to in Sec. 288. From this section and the two sections immediately preceding it, we gather that it was the intention of the Legislature that, on the appearance of a person summoned in accordance with Sec. 282 there should be a formal judicial inquiry, and adjudication that the said person was likely to commit a breach of the peace, or do an act which might probably occasion a breach of the peace; and we cannot suppose, in the absence of the express direction of the law on this particular point, that it was intended that in such an investigation the ordinary judicial procedure was to be departed from, and that the final

(a) 2 Mad. H. C. Rep. 240.

1869
 Reg.
 v.
 Jivanji Linji

award might be made otherwise than upon legal evidence duly recorded. It is enacted in Sec. 288 that if the Magistrate shall be satisfied that it is necessary for the preservation of the peace to take a bond from the person he has summoned, with or without security, he may make the order contemplated by that section; but it appears to us that it would be a most erroneous interpretation of this section to hold that a Magistrate might be satisfied, and could inflict what amounts to a severe penalty, in the absence of any legal evidence regularly recorded. Sec. 307 appears to us to be a clear indication that the Legislature had no such design. On this point we concur in the judgment of the Calcutta High Court in the case of *Narsingh Narayan (b)*, a decision which has already been followed by another Division Bench of this Court in the case of *Reg. v. Dalpatram Pemabha*, decided on the 17th of December 1868 (c).

In the present case, as there has been no legal evidence duly recorded as a foundation for the Magistrate's decision, we hold his proceedings to have been illegal, and we reverse his order, and direct that the bonds taken from the accused and his sureties be cancelled, or that the accused if he be in custody under the order, be discharged.

WARDEN, J, concurred.

(b) 10 Calc. W. Rep., Cr. R. 1.

(c) 5 Bom. H. C. Rep., Cr. Ca. 105.

Order reversed.

Reg. v. Mehervanji Bejanji.

Cheating—Criminal Trespass—Unlawful Entry—Ind. Pen. Code, Secs. 415 and 441.

Where the accused secretly entered an Exhibition building without having purchased a ticket, and was there apprehended:

It was held that such act did not amount to the offence of cheating under Sec. 415 of the Penal Code.

Such entry, when unaccompanied by any of the intents specified in Sec. 441 of the Penal Code, does not amount to criminal trespass or any other criminal offence.

The accused, under Sec. 417 of the Penal Code, was convicted by Umedram Ranchoddas, Magistrate F. P. at