

REG. v. MALHARI LAULI, *et al.*

1869
June 24.

Appeal from Summary Determination of Zilla Magistrate
—Act XXXV. of 1850, Sec. 16 (Bombay Ferries' Act).

An appeal lies from the summary determination of the Magistrate of a Zilla, under Sec. 16 of Act XXXV. of 1850 (An Act for Regulating the Bombay Ferries) to the Session Judge. Such appeal need not be preferred within eight days under Sec. 14 of Reg. XIX. of 1827.

The accused were convicted by J. W. Robertson, District Magistrate of Thana, of having conveyed for hire passengers without a license, and were sentenced, under Sec. 14 of Act XXXV. of 1850, each to pay a fine of Rs. 200 to be recovered, if not paid, as laid down in Sec. 14 of Reg. XIX. of 1827.

On appeal, the Acting Session Judge, A. Bosanquet, confirmed the conviction, but reduced the fine to Rs. 50, the same to be recovered as directed by Sec. 16 of Act XXXV. of 1850.

After the order of the Session Judge was communicated to the District Magistrate, the latter addressed a letter to the Registrar of the High Court, containing the following remarks:—

"The fines not having been paid, recourse for their recovery was accordingly had, as laid down in Sec. 14 of Reg. XIX. of 1827, under which an appeal must be preferred within eight days as hereinafter allowed."

"Such appeal in this instance not having been preferred for upwards of eight days (some fifteen days having elapsed after the decision), the Session Judge, I am of opinion, was not, under the circumstances, empowered to pass the decree on appeal setting aside the order of this Court by which he has reduced the amount of fine imposed from Rs. 200 to Rs. 50:

"Sec. 16 of Act XXXV. of 1850 states that 'all offences against this Act shall be summarily heard and determined by the Magistrate of the zilla, from which it would appear that an appeal will not lie, as the Magistrate has full power to dispose of such cases in a summary manner—an opinion

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which would seem to be confirmed *from the summary process authorized for the levy of all fines inflicted under the Act.*

"Should the view I take be ruled to be correct, I have the honour respectfully to request that the order of the Sessions Court passed against this Court's decision in this case may be set aside; first, on the ground that such Court is not empowered to accept an appeal against any decision passed and determined summarily under Sec. 16 of Act XXXV. of 1850; and, secondly, that should an appeal lie against such decision, it ought to have been preferred *within eight days*, as directed in Sec. 14 of Reg. XIX. of 1827."

The Acting Session Judge, on being required by the High Court to furnish a report on the matter, reported as follows:—

"The District Magistrate's sentence was passed under a local law, Sec. 16 of Act XXXV. of 1850. I consider that an appeal lay to the Session Court from that sentence under Secs. 5, 21, and 409 of the Criminal Procedure Code.

"The District Magistrate contends that under Sec. 16 of Act XXXV. of 1850, and Sec. 14 of Reg. XIX. of 1827, his sentence is final. The first-named section enacts that all offences under the Act shall be summarily heard and determined by the Magistrate of the zilla, and that all penalties shall be recovered in the manner directed in the last named section. I submit, first, that 'summarily' means 'immediately,' or 'without delay,' and does not mean that the sentence is final; and, secondly, that the words 'All penalties shall be recovered in the manner directed for the recovery of the fines specified in clauses 1, 2, and 3 of Sec. 14 of Reg. XIX. of 1827 of the Bombay Code,' must be held to be modified by Secs. 5, 21, 409 and 415 of the Criminal Procedure Code."

PER CURIAM—(WARDEN and GIBBS, JJ.):—The Magistrate is to be informed that this Court concurs with the Session Judge that an appeal will lie; and that Sec. 14 of Reg. XIX. of 1827 refers only to the Courts of Petty Sessions in Bombay.