

Magistrate, who, on finding the complaint to be without foundation, directed a subordinate Magistrate to commit the complainant to the Session Court, that the directing order was a sufficient sanction (a). In a Bombay case prosecution for non-attendance in obedience to a summons was entertained without the sanction or complaint required by Sec. 16 of the Code of Criminal Procedure; and it was held that there was an implied sanction for the prosecution, as the conviction was by the same Magistrate whose summons was treated with contempt: *Reg. v. Ganu bin Tatia* (b). The present case is the same in principle.

1869

Reg.

v.

Muhammadkhan
vs. Imankhan.*Cur. adv. vult.*

26th August—LLOYD, J.:—There is an implied sanction to the institution of criminal proceedings where the Magistrate before whom the false evidence was given is also the committing Magistrate. As the prisoner did not object to the jurisdiction of the Court when he was put on his trial, it is now too late to take this objection.

WARD N, J.:—I concur.

Petition rejected.

(a) 5 Wyman's Rep. 59. (b) 5 Bom. H. C. Rep. Cr. Ca. 38.

Reg. v. Kala Karsan, et al.

Trial with aid of assessors—Omission to state grounds of decision—Error of procedure not prejudicing accused—Crim. Proc. Code. Sec. 379.

Sept. 23.

In a trial conducted with to the aid of assessors the Judge's omission to state the ground of his decision is not an illegality which invalidates the conviction.

The accused, Kala Karsan, and seven others were convicted under Sec. 412 of the Indian Penal Code, by W. Sandwith, Session Judge of Ahmedabad, of the offence of receiving property stolen in the commission of dacoity, knowing it to have been stolen, and sentenced to be transported for life.

The prisoners, Kala Karsan, Jetha Jassa, Uma Jiva, and Amlusu Bhava, having appealed from the conviction and sentence, the appeal was argued before Warden and LLOYD, J. J.

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Shaik Amiruddin for the prisoners:—The Session Judge in this case has recorded no reasons for his finding. This was a trial with the aid of assessors, and the Judge differed from the assessors in his finding on the charge. Sec. 379 of the Criminal Procedure Code requires that in trials not by jury the ground of the Judge's decision shall be recorded. The words are imperative, and failure to comply with the requisition is not a mere irregularity, it is an illegality which vitiates the finding. Though there are no decided cases on this portion of the section, there are decisions upon the former portion of it which refers to trials by jury, enacting that the Judge *shall* sum up the evidence to the jury. Upon that it was held that when a Judge did not sum up the evidence, or there was a defect in his summing up of the evidence, such omission was an illegality which invalidated the conviction: *Queen v. Shumshere Beg (a) Bhugwan v. Doyal Gope (b)*.

Dhirajlal Mathuradas in support of the conviction:— Failure to state the reasons for a Judge's finding is only a defect of procedure, and under Sec. 426 no conviction can be set aside for an error or defect that does not prejudice the accused. In several cases decided by Mr. Grant, Judge of Ahmedabad in 1866, some of them involving capital sentences, no reasons were stated for the finding, yet this Court refused to interfere.

PER CURIAM:—We hold that the Judge's omission to record his reasons for judgment was, under the circumstances, an irregularity which did not vitiate the finding.

(a) 9 Calc. W. Rep, Cr. R. 51.

(b) 10 Ibid. 7.