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Jailli, when dedicating her adopted child Sundri, did not relinquish her own guardianship of the child, and give possession of her to any one else.

According to the language of that section of the Indian Penal Code under which Jailli has been convicted, it is however sufficient, if, when dedicating Sundri to the temple she knew it to be likely that the child would be used for the purpose of prostitution, and the evidence on this point is far too strong to admit of a doubt; besides which, her own admissions, when under examination before the Magistrate, are a complete bar to any plea of ignorance on that score being set up.

With regard to the second point urged before us, we are of opinion that it is not essential that Jailli should have given up present possession of the child in order to render herself amenable to the law quoted. By her dedication to the temple Sundri was doomed to be a Bhavin, and in all likelihood a prostitute for life, and we hold, therefore, that this was a disposal of the child, which by the law in question is made a penal offence.

Petition rejected.

Sept. 29.

Reg. v. Nantamram Uttamram.

Public servant—Ind. Penal Code, Sec. 21—Crim. Proc. Code, Sec. 422—Appeal—Review of evidence.

An engineer who receives and pays to others municipal moneys is a public servant within the meaning of Sec. 21 cl. 10 of the Indian Penal Code, although he may not have the power of sanctioning the expenditure of such moneys.

When an Appellate Court, under Sec. 422 of the Code of Criminal Procedure, directs a Court of first instance to take additional evidence, an appeal on the merits to the High Court is not thereby given.

The prisoner was tried before A. D. Carey, Magistrate, F. P. at Surat, on a charge framed under Sections 161 and 116 of the Indian Penal Code, of abetting the acceptance by a public servant of a gratification other than legal remuneration in respect of an official act, and being convicted, was sentenced to suffer rigorous imprisonment for one year,

and to pay a fine of Rs. 500, or in default to suffer further rigorous imprisonment for the space of four months.

The circumstances of the case are briefly these :—

Edward Jones was employed by the Municipality of Surat as engineer for their inundation works. He gave contracts for masonry work to the accused, Nantamram. The latter, in order to induce Jones to pass inferior materials, was alleged to have offered him some jewels.

From the conviction and sentence the accused appealed to the Session Judge, who said that there were two questions to be considered: first, whether the complainant was a public servant within the meaning of section 21 of the Indian Penal Code; and, secondly, whether there was evidence to support the conviction under sections 161 and 116. Upon the first question he found that there were no sufficient data before him to enable him to decide it. He therefore directed the Magistrate F. P. to make full inquiry into the appointment and employment of Jones under the Municipality. Upon the second question he remarked that, while he was not prepared to say that if he had been presiding at the trial of the accused he would have convicted the accused of a criminal offence, still, as the accused had been convicted by the Magistrate F. P., he saw no sufficient reason for interfering with his decision on the ground that it was contrary to the weight of evidence. The Session Judge, however, held that the facts, as established before the Magistrate, would only support a conviction under section 165.

As regards the first point, after considering the additional evidence certified by the Magistrate, the Session Judge came to the conclusion that there was no ground for his interference. He, however, mentioned, that he came to this conclusion with the less hesitation, as, according to his view of the law, the accused had acquired, by reason of fresh evidence having been taken under the direction of the Session Court, a right of preferring a regular appeal to the High Court. He altered the sentence to one under Sec. 165, and reduced the unexpired sentence of imprisonment to simple imprisonment for a term of one month,

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directing that if the fine which had been imposed were not paid, the accused should undergo further simple imprisonment for one month.

The case was heard by GIBBS and LLOYD, JJ.

Branson (with him *Nanabhai Haridas*) for the accused :— There are two points for decision in this case. The first is that which was disposed of by the Court (GIBBS and MELVILL, JJ.,) on the 7th of July last, when the record and proceedings were sent for. It is whether the Lower Appellate Court having, under Sec. 422 of the Code of Criminal Procedure, directed new evidence to be taken on the point of Jones being a public servant, and appreciated it itself for the first time, a regular appeal lies to this Court. In the case of *Reg. v. Mohesh Chunder (a)*, the Magistrate having decided a case without examining the witnesses for the defence, the Session Judge, on appeal, ordered the evidence of those witnesses to be taken by the Magistrate. Their deposition were returned to the Session Judge, who proceeded to deal with the case under Sec. 422 of the Code of Criminal Procedure, and confirmed the judgment and sentence passed by the Magistrate. It was held that the judgment of the Session Judge (though in form confirming the Magistrate's judgment and sentence) was in substance an original judgment, and that, under Sec. 408 of the Code, an appeal lay from it to the High Court upon the merits.

GIBBS, J. :— Upon this point we are of opinion that no appeal lies on the merits. The Bengal case was decided upon a construction of Sec. 422, before it was amended by Act VIII. of 1869. The Appellate Court could, under the old law, have passed such judgment, sentence, or order, as to it should have seemed meet. It cannot do so now. It can only "proceed to dispose of the *appeal* in the manner prescribed by Sec. 419," that is to say, it can only alter or reverse the finding or sentence of the Lower Court. We must, however, in this case go into evidence so far as to see whether the facts establish the allegation that Jones is a public servant.

(a) 2 Calc. W. Rep. Cr. R. 13.

Then it is contended that he is not a public servant within the meaning of Sec. 21 of the Indian Penal Code. As an employee of the Surat Municipality he could only have been appointed under Act XXVI. of 1850, or the local rules framed under that Act. The Act speaks of such employes as officers and servants of *the Commissioners*, and there is nothing in those rules which makes them public servants. The illustration under cl. 10 of Sec. 21, says: "A Municipal Commissioner is a public servant." This shows that the servants of a Municipal Commissioner are not public servants. Wherever the Legislature intended to make any class of servants public servants they have done so in definite language. Thus Bombay Act II. of 1865 by Sec. 20, cl. 2, makes persons appointed under that Act public servants; and the Indian Registration Act, 1866, by Sec. 96, makes registration officers public servants. The Legislature has even passed special acts for this purpose. It passed Bombay Act IV. of 1867, Sec. 16, to make halalcotes, and Act XXXI. of 1867 Sec. 2, to make railway employes public servants.

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He then read the evidence of Mr. Hope and Pandurang Balkrishna to show that Jones was not an officer whose duty it was as *such officer* to expend money; and contended that the words "to expend" in cl. 10, Sec. 21 of the Penal Code meant "to expend on his own responsibility."

Scoble. (with him *Dhirajlal Mathuradas*, Government Pleader) in support of the conviction:—The intention of the Legislature in enacting specific provisions for making certain important classes of persons public servants was to prevent all dispute; but this does not make these provisions, which are merely declaratory, restrictive. The distinction attempted to be drawn between public servants and municipal servants cannot be supported. If Jones were a private servant of the Municipal Commissioners that might be different; but he is employed on some of their public works.

Evidence was read to show that it was the duty of Jones to receive and expend money, and that he did, as a matter of fact, receive and expend money.

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GIBBS, J.:—In this case we are called upon to exercise what is commonly called the extraordinary jurisdiction of the Court, viz., to see whether an error in law does not exist in the conviction. The accused was convicted by Mr. Carey, Magistrate F. P. at Surat, under Ss. 161 and 116 of the Indian Penal Code, of abetting the acceptance by a public servant of certain valuable property. The conviction was altered by the Session Judge on appeal to one under Ss. 165 and 116, as he was of opinion that the mere offer of jewels by a contractor to the person whose duty it was to pass his works was an offence coming more properly under those sections. The Session Judge, even after the additional evidence, had, apparently, doubts as to whether Jones was a public servant within the meaning of the Penal Code, for there is a want of clearness in the conclusion at which he arrived, he says: "Therefore, as the Magistrate has found that the complainant, Mr. Jones, was a public servant, and as in the further inquiry the Magistrate and President of the Municipality—than whom there could not be a better authority on the subject—has deposed that it was the duty of Mr. Jones to expend municipal money, I think there is no ground for my interference." Indefinite as this is, we must look upon it as a finding that Jones was a public servant, as otherwise he could not have held the conviction under Sec. 165 good. It has been argued before us that this finding is not borne out by the evidence. Mr. Hope, on being asked whether authority to expend municipal money had at any time been given to Jones, says: "Under the resolution A, in connection with others, he could, under certain circumstances and as a matter of fact the circumstance did occur, and he did exercise the authority. The other resolutions I refer to are those marked B and C in the minute book. By these resolutions the Municipality granted Rs. 50,000 for inundation works. That money was placed at my disposal to spend, and I directed Mr. Jones to prepare estimates, and to give contracts on my general approval of the projects; and in accordance with resolution marked D, I gave Mr. Jones certain directions. Mr. Jones at the end of every month used to send me bills of

the amount of work which he had had done, which I no'ed 'admissible,' and sent to the Municipal Secretary." Without therefore, deciding that a person on whose signature public money is paid may not be said to "expend it," a view I am personally prepared to hold, it seems to us in the present case, upon the evidence of Jones, corroborated as it has been by Mr. Hope, that Jones did in fact receive municipal money, and pay the same to the contractors; and we are of opinion that this is sufficient to bring him within the 10th clause of Sec. 21 of the Indian Penal Code. We see therefore no ground to exercise the extraordinary powers of the Court in this case.

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Petition rejected.

Shankar Abaji Hoshing.....

Petitioner.

Subordinate Magistrate of Second Class-Entertaining case on report of Police Officer-Crim. Proc. Code, Sec. 66 A-Transfer of case from one Magistrate's Court to another.

Oct. 6.

A Subordinate Magistrate, 2nd Class, who is not specially vested with powers under Sec 66 A of the amended Code of Criminal Procedure, has no jurisdiction to try a case on the report of a Police Officer, or on a complaint directly preferred to him.

The High Court will not, except on very strong and very clear grounds, transfer a case from one Magistrate's Court to that of another Magistrate.

This was an application for the transfer of a case from the Magistrate's Court in which it was pending to another Court.

Macpherson (with him Shantaram Narayan) in support of the application.

Dhirajlal Mathuradas contra.

Cur. ad. vult.

The facts appear from the judgment of the Court (Gibbs and Melvill, JJ.) delivered by.

Gibbs, J.:—In this case the petitioner applies for the transfer of a criminal case now pending against him in the Court of the Subordinate Magistrate 2nd Class, of Wai, to some other Court in the district of Satara. The petitioner