

1869
Dec. 1.

Reg. v. Keshavshet, et al.

Magistrate F. P.—Magistrate of the District—Court of Session—Reference to the High Court—Crim. Proc. Code (Amended) Sec. 23 G, and 434.

Held, that under the provisions of Section 23 G. of the Code of Criminal Procedure, a Magistrate F. P. is, for the purposes of Section 434, immediately subordinate to the Magistrate of the District, and not to the Court of Session.

One Balshet bin Narayanshet, in a petition to the Session Judge of Ra'nagiri, stated that he had complained to the Magistrate F. P. that his wife had been enticed away by the accused, and that that officer, without reducing his complaint to writing, refused to issue a summons. Mr. Lyon, Acting Session Judge, thereupon made the following order:—

"This is an application under Sections 434 and 435 of the Criminal Procedure Code. The offence in regard to which the application is made appears to be under Section 498 of the Indian Penal Code, which is specified in the seventh column of the schedule annexed to the Criminal Procedure Code as triable by the Magistrate of the District. In order to give this Court jurisdiction the offence must be specified as triable by the Court of Session, or as triable by the Court of Session or Magistrate of the District; and this not being the case, the Court has no jurisdiction under Section 435.

"In order to give the jurisdiction under Section 434, it is necessary that there should be some irregularity in the proceedings of the subordinate Court; and that that Court should be immediately subordinate to the Session Court. In this case an irregularity has been committed. The provisions of Section 66 of the Procedure Code have not been complied with. No examination of the complainant appears to have been made, nor has any such been committed to writing. The Magistrate F. P. appears to be immediately subordinate to the Session Court. As I am of opinion that by reason of the above irregularity in the proceeding the order of the Magistrate F. P. refusing to issue a summons is contrary to law, it is ordered, under the provisions of Section 434 of the Code, that the proceedings be referred for the orders of the High Court."

The proceedings were accordingly referred to the High Court.

PER CURIAM (GIBBS and MELVILL, JJ.):—The Court is of opinion that, under the provisions of Section 23 G. of the Code of Criminal Procedure, a Magistrate F. P. is, for the purposes of Section 434, immediately subordinate to the Magistrate of the District, and not to the Court of Session. The Acting Session Judge, therefore, had no authority to call for or to refer these proceedings, and the Court can make no order on the reference.

No order.

Reg. v. Bhaishankar Narbheram.

Inquest Report—Evidence—Reg. XII. of 1827, Sec. 52.

Reg. XII, of 1827, Sec. 52, having been repealed by (Bombay) Act VIII. of 1867, an inquest report is not admissible in evidence.

In this case the record and proceedings were sent up to the High Court for confirmation of the sentence of death passed by C. G. Kemball, Session Judge of Surat, upon the prisoner, who was tried and convicted of the offence of culpable homicide amounting to murder.

The Court (GIBBS and MELVILL, JJ.) made the following order:—

The Court confirms the sentence of death passed upon the prisoner, Bhaishankar Narbheram. The Session Judge should be informed that Reg. XII. of 1827, Sec. 52, having been repealed by Bombay Act VIII. of 1867, the inquest report was not admissible in evidence, and should not have been recorded as such.

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