

1870.
April 20.

REG. V. AMRUTA' NATHU.

Crim. Proc. Code, Sec. 173—Act XXIII. of 1861, Sec. 16—Case sent by a Subordinate Judge to a District Magistrate for investigation—Refusal of Magistrate to investigate.

A Subordinate Judge, finding that a person had made a false verification of a plaint, sent his case for investigation to a Magistrate of the district, who refused to investigate it, on the ground that the alleged offence was one triable exclusively by the Court of Session, to which the Subordinate Judge himself should, under Sec. 173 of the Code of Criminal Procedure, have committed it.

Held that the Magistrate of the District was bound to proceed with the investigation of the case, according to Sec. 16 of Act XXIII. of 1861.

THIS was a reference from the Honorable G. A. Hobart, Session Judge of Khándesh, under Sec. 434 of the Code of Criminal Procedure, submitting the proceedings in this case for the orders of the High Court, in consequence of a report of the Subordinate Judge of Varangám. The Session Judge stated—

“The Subordinate Judge of Varangám reported to this Court, on the 9th of February last, that, under Sec. 16 of Act XXIII. of 1861, he had, being of opinion that one Amrutá Nathu had made a false verification of a plaint in a case before him, sent the case to the District Magistrate for investigation, and that the Magistrate had returned him the case declining to make the investigation, which the Subordinate Judge was of opinion was an illegal proceeding, the ruling of the High Court of Bombay, reported at page 30, Crown Cases, Vol. IV. Bombay High Court Reports, showing it to be so. The record of the proceedings was sent for by this court, as it was of opinion that the District Magistrate's refusal to investigate the case, as reported by the Subordinate Judge, was not regular.

“The record being certified, it appears that the case was sent to the District Magistrate, for the purpose specified in his report to this court, by the Subordinate Judge, with a formal sanction to a prosecution being instituted against

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Amrutá Nathu, for having made before him a false verification of a plaint. This was on the 10th of January last, and on the 20th idem the District Magistrate sent back the papers of the case to the Subordinate Judge, declining to investigate the case, on the ground that such an offence as that which Amrutá Nathu was said to have committed was one punishable under Sec. 199 of the Penal Code, and was triable exclusively by a Court of Session ; and that, under Sec. 173 of the Criminal Procedure Code, the Subordinate Judge should have completed the investigation himself, and, if the case required commitment, have himself committed the accused to the Court of Session for trial for the alleged offence.

“The precedent quoted by the Subordinate Judge does not apply to the case so nearly as that of *The Queen v. Jan Mahomed (a)*, which appears to be on all fours with the present case, and the ruling in that reported case shows that the District Magistrate, in his refusal to investigate the case, acted irregularly, and that the Subordinate Magistrate, having once sent the case to the Magistrate, could not himself investigate it, and commit the accused to the Court of Session. This court is of opinion that it would probably have been better (being apparently more convenient) that the Subordinate Judge should have disposed of the case without reference to the Magistrate, as he could have done ; but, nevertheless, it was a matter in which he was at liberty to exercise his own discretion.”

The reference was considered by WARDEN and LLOYD, JJ.

PER CURIAM:—The Court, agreeing with the Judge of Khándesh, reverses the order of the District Magistrate, and directs him to proceed with the investigation of the case according to law (Sec. 16 of Act XXIII. of 1861).

(a) XII. Cal. W. Rep., Cr. R. 41.