

to hold that if A, B, and C are sentenced respectively to fines of Rs. 1,000, Rs. 500, and Rs. 50, on appeal A and B may get off scot-free, while C, whose case is on all fours with theirs as to proof, but who is entitled to leniency (in the opinion of the original court) on other grounds, is to be mulcted in Rs. 50. I cannot read the law so as to arrive at such an inequitable result. It is with extreme diffidence that I go contrary to the Calcutta precedent, but my opinion is so strong on the point that I must decline to submit it to less authority than that of the High Court to which I am subordinate. I affirm the convictions, and reduce the sentences to fines of Rs. 20 each, in default rigorous imprisonment for fifteen days."

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The reference was considered by WESTROPP, C.J., and LLOYD, J.

PER CURIAM :—The Court annuls the order of the Session Judge, and restores the original sentences passed upon those convicts who were fined only Rs. 50 by the Magistrate F. P.

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June 9.

*Sentence passed by Subordinate Magistrate—Annulment of Sentence of District Magistrate—Commitment to Court of Session.*

Where a District Magistrate annulled a conviction passed by a Subordinate Magistrate, 1st Class, of voluntarily causing hurt by means of an instrument for stabbing, cutting, &c., under Sec. 324 of the Indian Penal Code (an offence cognisable by the Subordinate Magistrate), and directed the Subordinate Magistrate to commit the accused to the Court of Session for trial on the charge of voluntarily causing grievous hurt by means, &c. (a charge cognisable by the Court of Session) :

The High Court annulled the order of the District Magistrate, and restored the conviction and sentence of the Subordinate Magistrate.

THE accused was tried before Shankar Pándurang Pandit, Subordinate Magistrate of the 1st Class in the district of Kaládgi, for the offence of voluntarily causing hurt by an instrument of cutting, under Sec. 324 of the Indian Penal Code, and was sentenced to suffer rigorous imprisonment for six months, and pay a fine of Rs. 150, or in default to suffer

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rigorous imprisonment for a further period of a month and a half.

An appeal was made to the Magistrate of the Kaládgi District, who, being of opinion that the facts of the case disclosed the infliction of grievous hurt by a dangerous weapon, an offence exclusively cognisable by a Court of Session, cancelled the conviction and sentence, and ordered the Subordinate Magistrate to commit the accused to that court, under Sec. 326 of the Indian Penal Code.

The Assistant Session Judge, before whom the accused was to be tried, was of opinion that the District Magistrate had no power to cancel the conviction and sentence passed by the Subordinate Magistrate, as the latter had jurisdiction to try the offence of voluntarily causing hurt by a cutting instrument, with which the accused was charged, and that if, in the opinion of the District Magistrate, the evidence disclosed a more serious offence, the matter should have been referred to the High Court. The Assistant Session Judge, therefore, postponed the trial of the case, and requested the Session Judge to make a reference to the High Court.

This reference was considered by WRSTRÖPP, C.J., and LLOYD, J.

PER CURIAM:—The Court annuls the order of the District Magistrate (who had himself annulled the conviction before the Subordinate Magistrate, 1st Class), and restores the conviction and sentence of the Subordinate Magistrate, and directs that the remaining unexpired portion of the sentence be carried out, and that the time, during which the prisoner has been in custody while awaiting trial before the Court of Session, be counted as part of the time awarded in the sentence.

*Order accordingly.*