

1870  
REG.  
v.  
DURGA'RA'M  
MA'DHAVRA'M.

The High Court had also sent for the record and proceedings of the case upon an examination of the monthly Criminal Returns of the district of Broach.

The case was reviewed by GIBBS and MELVILL, JJ.

PER CURIAM:—A fine levied by a pound-keeper is not a punishment imposed on conviction for an offence. The Magistrate F. P. was in error in holding that a person cannot be tried for an offence under Act XXVI. of 1850 because he has paid a fine under Sec. 6 of Act III. of 1857. The law (Criminal Procedure Code, Sec. 55) only provides that “a person who has once been tried for an offence and convicted or acquitted of such offence shall not be liable to be tried again for the same offence.” No order by this Court is necessary, as the Magistrate of the District has it in his power to take such steps as he may see fit.

*No order.*

June 30.

REG. V. VA'HA'LA' JETHA'.

*Prisoner's Confession—Confession taken before Magistrate not having jurisdiction to try—Crim. Proc. Code, Sec. 149.*

The words “a Magistrate” in Sec. 149 of the Code of Criminal Procedure mean “any Magistrate,” and not merely “the Magistrate having jurisdiction.”

The practice of taking prisoners before Magistrates not having jurisdiction in the case, for the purpose of getting a confession recorded, is not generally desirable, but such a confession is legally admissible in evidence when duly proved.

THIS was a reference from A. A. Borradaile, Magistrate of the District of Ahmedábád, submitting an extract from the finding of W. M. P. Coghlan, Session Judge of Ahmedábád, in the case of the accused, who was tried and convicted of murder, and sentenced to transportation for life. The District Magistrate stated—

“The question is the legality of taking, and the weight to be attached to, confessions made before Magistrates not having jurisdiction.

“Mr. Coghlan argues against the legality, and declines to accept as judicial confessions all admissions made before Magistrates other than those vested with powers to commit.

“I would, with much deference, draw their Lordships’ attention to the fact that in this particular case—and the same is, I believe, done in every other in this district—a complete formal record was made, as directed by the Calcutta High Court. (*Vide* note to Sec. 149 of Currie’s Procedure Code, 1869.)

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“I am aware that the practice of recording confessions before another than the committing Magistrate is, as a rule, to be deprecated, but I cannot think that it is illegal.

“Sec. 149 sanctions the acceptance of confessions made before ‘a’ Magistrate.”

The record and proceedings having been sent for, the reference was considered by GIBBS and MELVILL, JJ.

PER CURIAM:—The proceedings in this case have been called for, under Sec. 404 of the Criminal Procedure Code, on a report of the Magistrate of Ahmedábád.

The Court is of opinion that the words “a Magistrate” in Sec. 149 of the Criminal Procedure Code mean “any Magistrate,” and not merely “the Magistrate having jurisdiction,” as held by the Session Judge.

The practice of taking prisoners before Magistrates not having jurisdiction in the case, for the purpose of getting a confession recorded, is not generally desirable, but such a confession is legally admissible in evidence, when duly proved.

The above view derives some confirmation from a reference to Sec. 141 of the Draft Bill of Act VIII. of 1869, published at page 318 of the *Bombay Government Gazette* for 1868; that section is as follows:—

“No confession or admission of guilt made by any person whilst he is in the custody of a police officer shall be used as evidence against such person, unless it be made in the immediate presence of a Magistrate duly authorised to try, or to hold the preliminary inquiry into, the offence of which the person in custody is accused.”

This seems to indicate that the framers of the Bill had it in contemplation to restrict the exception in Section 149 within narrower limits, but that the Legislature rejected the proposed change.