

1870.  
Nov. 24.

REG. v. KA'LA' bin HARI GAMA *et al.*

*Code of Criminal Procedure, Sec. 435.*

Where a Magistrate of the District thinks that in any case tried by a Magistrate subordinate to him a failure of justice has occurred, in consequence of the latter not committing the accused for trial to the Court of Session, he should refer the case, with an expression of his opinion, to the Session Court, which has power, under Sec. 435 of the Code of Criminal Procedure, to direct a commitment to the Session Court for trial.

Sec. 435 having been altered by Act VIII. of 1869, it is no longer necessary to refer such cases to the High Court, as required by the Court's ruling in *Reg. v. Chanviráyá bin Chanbasáyá (a)*.

THIS was a reference from J. R. Arthur, Magistrate of the District of Sátará. The prisoners were tried by the Subordinate Magistrate of Karád, for the offence of using criminal force, and were acquitted. The District Magistrate, on a review of the proceedings of his subordinate, was of opinion that there was sufficient evidence in the case to secure a conviction of the accused of the offence of rape if they had been put on their trial before the Court of Session. He also stated that since the trial by the Subordinate Magistrate other evidence had been found. He, accordingly, requested the instructions of the High Court.

The reference was considered by GIBBS and MELVILL, JJ.

PER CURIAM :—The Magistrate should refer this case, with an expression of his opinion, to the Session Court, which has power, under Sec. 435 of the Code of Criminal Procedure, to direct a commitment to the Session Court for trial.

Sec. 435 having been altered by Act VIII. of 1869, it is no longer necessary to refer such cases to the High Court, as required by the Court's ruling in *Reg. v. Chanviráyá bin Chanbasáyá (ubi supra)*.

*Order accordingly.*